



## Indiana Finance Authority Environmental Programs

100 North Senate Avenue, Room 1275  
Indianapolis, Indiana 46204  
www.ifa.in.gov

**James P. McGoff**  
Director  
(317) 234-2916  
jmcgoff@ifa.in.gov

October 10, 2008

Ms. Karen Sykes  
EPA Grant Specialist  
U.S. Environmental Protection Agency, Region 5  
Assistance Section  
77 West Jackson Boulevard, MC-10J  
Chicago, Illinois 60604-3507

Re: Affirmation of Award  
Revolving Loan Fund Assistance Amendment # BL-00E48101-1

Dear Ms. Sykes:

This letter serves to affirm the grant award (increase of funds (supplemental)) from the United States Environmental Protection Agency (U.S. EPA) of \$2,000,000, with an amended total grant award of \$2,359,204, and a two-month time extension (amendment), which is reflected in a total budget/project period cost of \$2,831,044 (including the recipient's cost share) and a new five-year budget/project period of 06/01/2008 – 07/31/2013. The Indiana Finance Authority (IFA) appreciates this Revolving Loan Fund (RLF) Assistance Amendment (AA) that enables the IFA to capitalize loans at petroleum and/or hazardous substances-contaminated brownfields. To confirm the IFA's agreement with the Terms and Conditions (T&Cs) and applicable regulations set forth in the AA, enclosed is a signed and dated original AA.

Please note the following items with respect to the content of the AA and its T&Cs:

- On Page 1 of the AA: the IFA's Project Manager for this AA is not Cindy Shively Klem, but rather is Michele Oertel, as indicated in the IFA's RLF AA application, the associated RLF work plan, and on the U.S. EPA Assistance Agreement Notice cover page.
- On Page 3 of the AA: the Budget Summary Page, Table A, line item "6. Contractual" indicates \$143,681, however, this amount should be included in line item "8. Other," reflecting the total approved allowable budget cost of \$2,831,044 in "8. Other." Consistent with the IFA's Cooperative Assistance Agreement (CA) # BF-00E48101-0, the IFA's RLF AA application, and the associated RLF work plan, none of the RLF funds under this AA will be spent on contractual items.

➤ On Page 4 of the AA: under Administrative Conditions, "Utilization of Small, Minority and Women's Business Enterprises/Fair Share Objectives":

- There is a typo in the first sentence, which should read "...fair share objectives...."
- Within the paragraph "Accepting the Fair Share Objectives/Goals of Another Recipient," the two references to the **Indiana Department of Environmental Management** should be changed to the **Indiana Finance Authority** as the AA recipient.
- There are references within this updated Administrative Condition provision to both MBE/WBE and (new) DBE rule requirements, which the IFA understands to be applicable to all awards dated on or after May 27, 2008. The IFA intends to adhere to the new DBE Rule requirements (and any applicable state requirements), notwithstanding the lack of clarity in the AA Administrative Conditions on this subject.

The IFA acknowledges the updates and/or additions to the T&Cs of its CA # BF-00E48101-0 and will operate under the presumption that these updates/additions are to amend and/or substitute for the T&Cs of CA # BF-00E48101-0, making the merged T&Cs applicable to AA # BL-00E48101-1. Any inconsistency or ambiguity in the T&Cs will be resolved by giving precedence to the T&Cs of AA # BL-00E48101-1 unless the U.S. EPA Project Officer for the AA advises otherwise. Should a provision only appear in CA # BF-00E48101-0, the IFA will adhere to the CA # BF-00E48101-0 provision notwithstanding its absence from the T&Cs of AA # BL-00E48101-1.

The IFA appreciates partnering with the U.S. EPA for the Indiana Brownfields Program to continue its important work of facilitating redevelopment for Indiana communities. Should you have any questions regarding this correspondence, please contact Ms. Michele Oertel, Indiana Brownfields Program EPA/Community Liaison and Outreach Coordinator, at 317-234-0235 or [moertel@ifa.in.gov](mailto:moertel@ifa.in.gov).

Sincerely,



James P. McGoff  
Director of Environmental Programs  
Indiana Finance Authority

Enclosure  
MMO/JM

cc: Walter W. Kovalick, Jr., U.S. EPA, Region 5  
Deborah Orr, U.S. EPA, Region 5



# U. S. ENVIRONMENTAL PROTECTION AGENCY ASSISTANCE AGREEMENT NOTICE

RECEIVED  
SEP 22 2008

RECIPIENT NAME AND ADDRESS:

INDIANA FINANCE AUTHORITY  
ATTN.: Michele Oertel, Project Manager  
100 N. Senate Avenue, Room 1275  
Indianapolis, Indiana 46204

INDIANA  
BROWNFIELDS PROGRAM

Assistance #BL00E481-01-1

☐ Notice of Award/Assistance Agreement

☒

Assistance Amendment

☒

Increase

☐ Decrease

☐ Time Extension

☐ Administrative Changes

Enclosed are two copies of an Assistance Agreement from the U.S. Environmental Protection Agency.

To provide your affirmation of this award, please carefully review the entire document, terms and conditions, and any applicable regulations. Please sign<sup>1</sup> and date the Affirmation of Award section on the first page and return one original copy to the following address within 21 days<sup>2</sup> of your receipt of the Assistance Agreement:

U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 5  
ASSISTANCE SECTION  
77 WEST JACKSON BOULEVARD, MC-10J  
CHICAGO, ILLINOIS 60604

ATTN: KAREN SYKES, EPA Grant Specialist


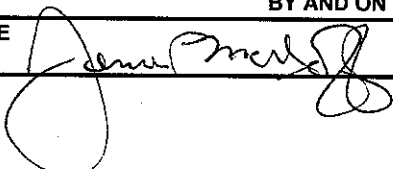
The other original should be retained for your official records and copies distributed within your organization as needed. Please note that funds will not be available for drawdown until we receive your countersigned affirmation of this award. If the Notice of Award includes any terms and conditions requiring signed certifications or assurances, you must return them with the signed agreement.

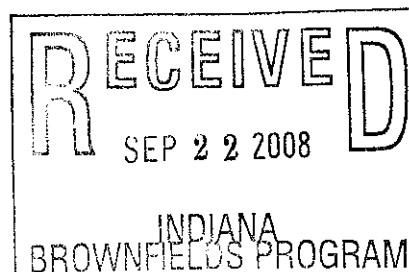
Please reference the EPA Assistance Number on all future correspondence regarding this Assistance Agreement. If you have any questions, you may contact the Project Officer (programmatic concerns) or the Grant Specialist (administrative concerns), as identified on page one of the Assistance Agreement.

<sup>1</sup> MUST be signed by the authorized representative as shown on the Assistance Agreement signature block or by a formally authorized delegate.

<sup>2</sup> Failure to countersign and return within (21) days of receipt may result in withdrawal of this agreement.

U.S. Environmental Protection Agency  
Region 5  
Assistance Section

	<b>U.S. ENVIRONMENTAL PROTECTION AGENCY</b>  <b>Assistance Amendment</b>		ASSISTANCE ID NO.			<b>DATE OF AWARD</b> 09/10/2008  <b>MAILING DATE</b> 09/17/2008  <b>ACH#</b> 50187
			PRG	DOC ID	AMEND#	
			BL -	00E48101	- 1	
			<b>TYPE OF ACTION</b> Revision: Scope & Increase  <b>PAYMENT METHOD:</b> ASAP			
<b>RECIPIENT TYPE:</b> State			<b>Send Payment Request to:</b> Las Vegas Finance Center			
<b>RECIPIENT:</b> Indiana Finance Authority 1 North Capitol, Suite 900 Indianapolis, IN 46204 EIN: 35-6000158			<b>PAYEE:</b> Indiana Finance Authority 1 North Capitol, Suite 900 Indianapolis, IN 46204			
<b>PROJECT MANAGER</b>		<b>EPA PROJECT OFFICER</b>		<b>EPA GRANT SPECIALIST</b>		
Cindy Shively Klem 1 North Capitol, Suite 900 Indianapolis, IN 46204 E-Mail: cklem@ifa.in.gov Phone: (317) 234-6018		Deborah Orr 77 West Jackson Blvd., SE-4J Chicago, IL 60604-3507 E-Mail: Orr.Deborah@epa.gov Phone: 312-886-7576		Karen Sykes Assistance Section, MC-10J E-Mail: sykes.karen@epamail.epa.gov Phone: (312) 886-7571		
<b>PROJECT TITLE AND EXPLANATION OF CHANGES</b> Indiana Finance Authority The work to be performed in this project is to develop Revolving Loan Fund (RLF) Incentive process and guidelines; develop model loan documents; conduct outreach activities; prioritize sites; propose RLF Incentive schedule; perform oversight of cleanup; and conduct reporting, closeout and post-closeout activities.  Increase of Funds (Supplemental); Recipient Information; Scope of Work (Major); Time Extension (Amendment);						
<b>BUDGET PERIOD</b>		<b>PROJECT PERIOD</b>		<b>TOTAL BUDGET PERIOD COST</b>		<b>TOTAL PROJECT PERIOD COST</b>
06/01/2008 - 07/31/2013		06/01/2008 - 07/31/2013		\$2,831,044.00		\$2,831,044.00
<b>NOTICE OF AWARD</b>  Based on your application dated 06/02/2008, including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA), hereby awards \$2,000,000. EPA agrees to cost-share 83.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$2,359,204. Such award may be terminated by EPA without further cause if the recipient fails to provide timely affirmation of the award by signing under the Affirmation of Award section and returning all pages of this agreement to the Grants Management Office listed below within 21 days after receipt, or any extension of time, as may be granted by EPA. This agreement is subject to applicable EPA statutory provisions. The applicable regulatory provisions are 40 CFR Chapter 1, Subchapter B, and all terms and conditions of this agreement and any attachments.						
<b>ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)</b>				<b>AWARD APPROVAL OFFICE</b>		
<b>ORGANIZATION / ADDRESS</b>				<b>ORGANIZATION / ADDRESS</b>		
U.S. EPA Region 5 Mail Code MCG10J 77 West Jackson Blvd. Chicago, IL 60604-3507				U.S. EPA, Region 5 Superfund 77 West Jackson Blvd. Chicago, IL 60604-3507		
<b>THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY</b>						
<b>SIGNATURE OF AWARD OFFICIAL</b>		<b>TYPED NAME AND TITLE</b>			<b>DATE</b>	
Digital signature applied by EPA Award Official		Walter W. Kovalick, Jr., Ph.D., Assistant Regional Administrator for Resources Management			09/10/2008	
<b>AFFIRMATION OF AWARD</b>						
<b>BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION</b>						
<b>SIGNATURE</b>		<b>TYPED NAME AND TITLE</b>			<b>DATE</b>	
		James McGoff, Director of Environmental Programs			10-10-08	



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FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$ 359,204	\$ 2,000,000	\$ 2,359,204
EPA In-Kind Amount	\$ 0	\$	\$ 0
Unexpended Prior Year Balance	\$ 0	\$	\$ 0
Other Federal Funds	\$ 0	\$	\$ 0
Recipient Contribution	\$ 71,840	\$ 400,000	\$ 471,840
State Contribution	\$ 0	\$	\$ 0
Local Contribution	\$ 0	\$	\$ 0
Other Contribution	\$ 0	\$	\$ 0
Allowable Project Cost	\$ 431,044	\$ 2,400,000	\$ 2,831,044

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.818 - Brownfields Assessment and Cleanup Cooperative Agreements	CERCLA: Sec. 104	40 CFR PART 31

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
IFA-RLF	0805STX097	08	E4	05F2AG7	402D79E	4114	G526OL00		1,000,000
IFA-RLF	0805STX097	08	E4	05F2AG7	402D79EBP	4114	G526OS00		1,000,000
									2,000,000

## Budget Summary Page

<b>Table A - Object Class Category (Non-construction)</b>	<b>Total Approved Allowable Budget Period Cost</b>
<b>1. Personnel</b>	\$0
<b>2. Fringe Benefits</b>	\$0
<b>3. Travel</b>	\$0
<b>4. Equipment</b>	\$0
<b>5. Supplies</b>	\$0
<b>6. Contractual</b>	\$143,681
<b>7. Construction</b>	\$0
<b>8. Other</b>	\$2,687,363
<b>9. Total Direct Charges</b>	\$2,831,044
<b>10. Indirect Costs: % Base</b>	\$0
<b>11. Total (Share: Recipient 17.00 % Federal 83.00 %.)</b>	\$2,831,044
<b>12. Total Approved Assistance Amount</b>	\$2,359,204
<b>13. Program Income</b>	\$0
<b>14. Total EPA Amount Awarded This Action</b>	\$2,000,000
<b>15. Total EPA Amount Awarded To Date</b>	\$2,359,204

## **Administrative Conditions**

THE FOLLOWING TERM AND CONDITION HAS BEEN UPDATED:

### **UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISES**

#### **GENERAL COMPLIANCE, 40 CFR, Part 33**

The recipient agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority and Women's Business Enterprises in procurement under assistance agreements, contained in 40 CFR, Part 33.

#### **FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D**

A recipient must negotiate with the appropriate EPA award official, or his/her designee, fair share objectives for MBE and WBE (MBE/WBE) participation in procurement under the financial assistance agreements.

##### **Accepting the Fair Share Objectives/Goals of Another Recipient**

The dollar amount of this assistance agreement is \$250,000, or more; or the total dollar amount of all of the recipient's non-TAG assistance agreements from EPA in the current fiscal year is \$250,000, or more. The recipient accepts the applicable MBE/WBE fair share objectives/goals negotiated with EPA by the Indiana Department of Environmental Management as follows:

MBE: 5%

WBE: 6%

By signing this financial assistance agreement, the recipient is accepting the fair share objectives/goals stated above and attests to the fact that it is purchasing the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market as Indiana Department of Environmental Management.

##### **Negotiating Fair Share Objectives/Goals, 40 CFR, Section 33.404**

The recipient has the option to negotiate its own MBE/WBE fair share objectives/goals. If the recipient wishes to negotiate its own MBE/WBE fair share objectives/goals, the recipient agrees to submit proposed MBE/WBE objectives/goals based on an availability analysis, or disparity study, of qualified MBEs and WBEs in their relevant geographic buying market for construction, services, supplies and equipment.

The submission of proposed fair share goals with the supporting analysis or disparity study means that the recipient is **not** accepting the fair share objectives/goals of another recipient. The recipient agrees to submit proposed fair share objectives/goals, together with the supporting availability analysis or disparity study, to the Regional MBE/WBE Coordinator within 120 days of its acceptance of the financial assistance award. EPA will respond to the proposed fair share objective/goals within 30 days of receiving the submission. If proposed fair share objective/goals are not received within the 120 day time frame, the recipient may not expend its EPA funds for procurements until the proposed fair share objective/goals are submitted.

#### **SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C**

Pursuant to 40 CFR, Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to ensure that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

(a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

(b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

(c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

(d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

(e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.

(f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

**MBE/WBE REPORTING, 40 CFR, Part 33, Sections 33.502 and 33.503**

The recipient agrees to complete and submit EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" beginning with the Federal fiscal year reporting period the recipient receives the award, and continuing until the project is completed. Only procurements with certified MBE/WBEs are counted toward a recipient's MBE/WBE accomplishments. The reports must be submitted semiannually for the periods ending March 31<sup>st</sup> and September 30<sup>th</sup> for:

Recipients of financial assistance agreements that capitalize revolving loan programs (CWSRF, DWSRF, Brownfields); and

All other recipients not identified as annual reporters (40 CFR Part 30 and 40 CFR Part 35, Subpart A and Subpart B recipients are annual reporters).

The reports are due within 30 days of the end of the semiannual reporting periods (April 30<sup>th</sup> and October 30<sup>th</sup>). Reports should be sent to

Adrianne M. Callahan, Region 5 MBE/WBE Coordinator  
USEPA, Acquisition and Assistance Branch  
77 West Jackson Boulevard (MC-10J)  
Chicago, IL 60604

Final MBE/WBE reports must be submitted within 90 days after the project period of the grant ends. Your grant cannot be officially closed without all MBE/WBE reports.

EPA Form 5700-52A may be obtained from the EPA Office of Small Business Program's Home Page on the Internet at [www.epa.gov/osbp](http://www.epa.gov/osbp).

**CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302**

The recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.

**BIDDERS LIST, 40 CFR, Section 33.501(b) and (c)**

Recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR, Section 33.501 (b) and (c) for specific requirements and exemptions.

**THE FOLLOWING TERM AND CONDITION HAS BEEN ADDED:**

**SINGLE AUDIT ANNUAL REPORTING REQUIREMENT**

In accordance with OMB Circular A-133, which implements the single Audit Act, the recipient hereby agrees to obtain a single audit from an independent auditor if it expends \$500,000 or more in total Federal funds in any fiscal year. Within nine months after the end of a recipient's fiscal year or 30 days after



receiving the report from the auditor, the recipient shall submit a copy of the SF-SAC and a Single Audit Report Package. For fiscal periods 2002 to 2007 recipients are to submit hardcopy to the following address:

Federal Audit Clearinghouse  
1201 East 10<sup>th</sup> Street  
Jeffersonville, IN 47132

For fiscal periods 2008 and beyond the recipient **MUST** submit a copy of the SF-SAC and a Single Audit Report Package, using the Federal Audit Clearinghouse's Internet Data Entry System. Complete information on how to accomplish the 2008 and beyond Single Audit Submissions you will need to visit the Federal Audit Clearinghouse Web site: <http://harvester.census.gov/fac/>

### **Programmatic Conditions**

THE FOLLOWING TERM AND CONDITION HAS BEEN UPDATED:

#### **Revolving Loan Fund (RLF) Model Terms and Conditions**

##### **I. GENERAL FEDERAL REQUIREMENTS**

###### **A. Federal Policy and Guidance**

###### **1. Cooperative Agreement Recipients:**

a. In implementing this agreement, the cooperative agreement recipient (CAR) shall comply with and require that work done by borrowers and subgrant recipients with cooperative agreement funds comply with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 104(k). The CAR will ensure that cleanup activities supported with cooperative agreement funding comply with all applicable Federal and State laws and regulations. The CAR will ensure cleanups are protective of human health and the environment.

b. The CAR must consider whether it is required to have borrowers or subgrant recipients conduct cleanups under a State or Tribal response program. If the CAR chooses not to require borrowers and subgrant recipients to participate in a State or Tribal response program, then the CAR is required to consult with the Environmental Protection Agency (EPA) on each loan or subgrant to ensure the proposed cleanup is protective of human health and environment.

c. If the State or Tribe does not have a promulgated Response Program, then the CAR is required to consult with the Environmental Protection Agency (EPA) to ensure protectiveness of human health and environment.

###### **2. Borrowers and Subgrant recipients:**

a. A term and condition or other legally binding provision shall be included in all loans and subgrants entered into with the funds under this agreement, or when funds awarded under this agreement are used in combination with non-Federal sources of funds, to ensure that borrowers and subgrant recipients comply with all applicable Federal and State laws and requirements. In addition to CERCLA 104(k), Federal applicable laws and requirements include: 40 CFR 31 and OMB Circular A-87 for governmental recipients of subgrants or 40 CFR 30 and OMB Circular A-122 for non-profit recipients of subgrants and 40 CFR 30 and OMB Circular A-21 for educational institutions recipients of subgrants.

b. CERCLA 104(g) requires that borrowers and subgrantees comply with the prevailing wage rate requirements under the Davis-Bacon Act of 1931 for construction, repair or alteration contracts "funded in whole or in part" with funds provided under this agreement. The CAR must ensure that the borrower or subgrantee obtains recent and applicable wage rates from the U.S. Department of Labor and incorporate them into the construction, alteration or repair contract.

c. The recipient agrees to comply with Executive Order 13202 (Feb. 22, 2001, 66 Fed. Reg. 11225 )

of February 17, 2001, entitled "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally-funded Construction Projects," as amended by Executive Order 13208 (April 11, 2001, 66 Fed. Reg. 18717) of April 6, 2001, entitled "Amendment to Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects.

d. Federal cross-cutting requirements including, but not limited to, MBE/WBE requirements found at 40 CFR 31.36(e) or 40 CFR 30.44(b); OSHA Worker Health & Safety Standard 29 CFR 1910.120; the Uniform Relocation Act; National Historic Preservation Act; Endangered Species Act; and Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333) the Anti Kickback Act (40 USC 276c) and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250.

## **B. Eligible Brownfield Site Determinations**

1. The CAR must provide information to EPA about site-specific work prior to incurring any costs under this cooperative agreement for sites that have not already been pre-approved in the CAR's workplan by the EPA. The information that must be provided includes whether or not the site meets the definition of a brownfield site as defined in § 101(39) of CERCLA, the identity of the owner, and the date of acquisition.

2. If the site is excluded from the general definition of a brownfield site, but is eligible for a property-specific funding determination, then the CAR must provide information sufficient for EPA to make a property-specific funding determination. The CAR must provide sufficient information on how financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes. The CAR must not incur costs for cleaning up sites requiring a property-specific funding determination by EPA until the EPA Project Officer has advised the CAR that the Agency has determined that the property is eligible.

3. For any petroleum-contaminated brownfield site that is not included in the CAR's EPA approved workplan, the CAR shall provide sufficient documentation to the EPA prior to incurring costs under this cooperative agreement which includes (see the latest version of EPA's *Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund and Cleanup Grants* for discussion of this element):

- a. that a State has determined that the petroleum site is of relatively low risk, as compared to other petroleum sites in the State;
- b. that the State determines there is "no viable responsible party" for the site;
- c. that the State determines that the person assessing, investigating, or cleaning up the site is a person who is not potentially liable for cleaning up the site; and
- d. that the site is not subject to any order issued under section 9003(h) of the Solid Waste Disposal Act.

This documentation must be prepared by the CAR or the State following contact and discussion with the appropriate petroleum program official.

4. Documentation must include the identity of the State program official contacted, the State official's telephone number, the date of the contact, and a summary of the discussion to reach each determination that the site is of relatively low risk, that there is no viable responsible party and that the person assessing, investigating, or cleaning up the site is a person who is not potentially liable for cleaning up the site. Other documentation provided by a State to the recipient relevant to any of the determinations by the State must also be provided to the EPA Project Officer.

5. If the State chooses not to make the determinations described in 3.a. above, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the requisite determinations.

6. EPA must also make all determinations on the eligibility of petroleum contaminated brownfield sites located on Indian tribal lands. Prior to incurring costs for these sites, the CAR must contact EPA Project Officer and provide the information necessary for EPA to make the determinations described in 3.

## II. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS

### A. Term of the Agreement

1. The term of an RLF agreement is five years, unless otherwise extended by EPA at the CAR's request.
2. If after 3 years, EPA determines that the recipient has not made sufficient progress in implementing its RLF, the EPA may terminate the agreement. Sufficient progress is indicated by the grantee having made at least one loan or subgrant.

### B. Substantial Involvement

1. The U.S. EPA may be substantially involved in overseeing and monitoring this cooperative agreement.
  - a. Substantial involvement by the U.S. EPA generally includes administrative activities such as: monitoring; review and approval of procedures for loan and subgrant recipient selection; review of project phases; and approval of substantive terms included in professional services contracts.
  - b. Substantial EPA involvement also includes brownfield property-specific funding determinations described in I. B.1. under *EPA and/or State Approvals of Brownfield Sites* above. The CAR may also request technical assistance from EPA on which sites qualify as a brownfield site and when determining whether the statutory prohibition found in section 104(k)(4)(B)(i)(IV) of CERCLA applies. Generally, this prohibition prohibits a grant or loan recipient from using grant funds to cleanup a site if the recipient is potentially liable under §107 of CERCLA for that site.
  - c. Substantial EPA involvement may include reviewing financial and environmental status reports; and monitoring all reporting, record-keeping, and other program requirements.
  - d. Substantial EPA involvement may include the review of the substantive terms of RLF loans and cleanup subgrants.
  - e. EPA may waive any of the provisions in term and condition II. B.1, with the exception of property-specific funding determinations. EPA will provide waivers in writing.
2. Effect of EPA's substantial involvement includes:
  - a. EPA's review of any project phase, document, or cost incurred under this cooperative agreement will not have any effect upon CERCLA §128 *Eligible Response Site* determinations or for rights, authorities, and actions under CERCLA or any Federal statute.
  - b. The CAR remains responsible for ensuring that all cleanups are protective of human health and the environment and comply with all applicable Federal and State laws.
  - c. The CAR remains responsible for ensuring costs are allowable under applicable OMB Circulars.

### C. Cooperative Agreement Recipient Roles and Responsibilities

1. The CAR must acquire the services of a qualified environmental professional(s) to coordinate, direct, and oversee the brownfield cleanup activities at a particular site, if they do not have such a professional on staff.
  - a. The CAR shall act as or appoint a qualified "fund manager" to carry out responsibilities that relate to financial management of the loan and/or subgrant program. However, the CAR remains accountable to EPA for the proper expenditure of cooperative agreement funds. Any funding arrangements between the CAR and the fund manager for services performed must be consistent with 40 CFR Part 31.
  - b. The CAR is responsible for ensuring that borrowers and subgrant recipients comply with the terms of their agreements with the CAR, and that agreements between the CAR and borrowers and subgrant recipients are consistent with the terms and conditions of this agreement.

#### **D. Quarterly Progress Reports**

1. The CAR must submit progress reports on a quarterly basis (30 days after the end of each Federal fiscal quarter) to the EPA Project Officer. The progress reports must document incremental progress at achieving the project goals and milestones. Quarterly progress reports must include:

a. Documentation of: progress at meeting performance outcomes/outputs; project narrative; project time line, and an explanation for any slippage in meeting established outputs/outcomes.

b. An update on project milestones.

c. A budget recap summary page with the following headings: Current Approved Budget; Costs Incurred this Quarter; Costs Incurred to Date; and Total Remaining Funds.

d. If applicable, quarterly reports must specify costs incurred at petroleum-only brownfield sites.

e. Recipient quarterly reports must clearly identify which activities performed during the reporting period were undertaken with EPA funds, and will relate EPA-funded activities to the objectives and milestones agreed upon in the workplan including a list of sites where cleanup (either through loans or subgrants) activities were completed. Absent a Property Profile Form and consistent with the workplan for this agreement, activities undertaken with EPA funds to be included in quarterly performance and financial reporting may include:

1. Acres per property(ies)
2. Cleanup started/completed
3. Types of contaminants cleaned up
4. Acres of greenspace created
5. Engineering/institutional controls required, type, and if they are in place
6. Redevelopment underway
7. Number/value of loans made
8. Number/value of subgrants made
9. Funds leveraged
10. Jobs leveraged
11. Health monitoring studies, insurance, and/or institutional controls funded

2. The CAR must maintain records that will enable it to report to EPA on the amount of funds expended by the CAR, borrowers or subgrant recipients at petroleum sites.

3. The CAR must complete and submit relevant portions of the Property Profile Form reporting the signing of a loan or subgrant, the initiation of cleanup activities, the completion of cleanup activities and other relevant project milestones, e.g., concerning institutional controls, contaminants, and reuse. The CAR must submit the updated Property Profile Form reflecting such events within 30 days after the end of the Federal fiscal quarter in which the event occurred. The CAR may be provided access to an on line reporting system, the Assessment, Cleanup and Redevelopment Exchange System, by the EPA Project Officer to perform their reporting requirements. Alternately, the CAR may complete a hard copy version of the Property Profile Form available from their EPA Project Officer or on line at:  
<http://www.epa.gov/brownfields/pubs/rptforms.htm>

4. In accordance with 40 C.F.R. § 31.40 (d), the recipient agrees to inform EPA as soon as problems, delays or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the assistance agreement workplan.

### **III. FINANCIAL ADMINISTRATION REQUIREMENTS**

#### **A. Cost Share Requirement**

1. CERCLA §104(k)(9)(B)(iii) requires the recipient of this cooperative agreement to pay a cost share (which may be in the form of a contribution of money, labor, material, or services from a non-federal source) of at least 20 percent (i.e., 20 percent of the total federal funds awarded). The cost share contribution must be for costs that are eligible and allowable under the cooperative agreement and must be supported by adequate documentation.

#### **B. Eligible Uses of the Funds for the Cooperative Agreement Recipient, Borrower, and/or Subgrant Recipients**

1. To the extent allowable under the EPA approved workplan, cooperative agreement funds may be used for eligible programmatic expenses to capitalize the RLF and conduct cleanups.

a. The CAR must maintain records that will enable it to report to EPA on the amount of costs incurred by the CAR, borrowers or subgrant recipients at petroleum-only brownfield sites.

b. At least 60% of the funds must be used by the CAR to provide loans for the cleanup of eligible brownfield sites and for eligible programmatic costs for managing the RLF. Up to 40% can be used for subgrants to clean up eligible brownfield sites under the RLF and for eligible programmatic costs for managing subgrant(s) (note: cleanup subgrants are limited to \$200,000 per site).

c. The CAR may discount loans, also referred to as the practice of forgiving a portion of loan principle. For an individual loan, the amount of principal discounted may be any percentage of the total loan amount up to 30 percent, provided that the total amount of the principal forgiven for that loan shall not exceed \$200,000. For an RLF cooperative agreement budget as a whole, the total dollar amount of principal forgiven through discounted loans plus the amount subgranted shall not exceed a total of 40% of RLF grant funds awarded. The entities eligible for discounted loans are provided below.

d. To determine whether a cleanup subgrant is appropriate, the CAR must consider:

i. The extent the subgrant will facilitate the creation of, preservation of, or addition to a park, greenway, undeveloped property, recreational property, or other property used for nonprofit purposes;

ii. The extent the subgrant will meet the needs of a community that has the inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community;

iii. The extent the subgrant will facilitate the use or reuse of existing infrastructure; and

iv. The benefit of promoting the long-term availability of funds from a revolving loan fund for brownfield remediation.

The CAR must maintain sufficient records to support and document these determinations.

2. The CAR may use cooperative agreement funds to capitalize a revolving loan fund to be used for loans or subgrants for cleanup and for eligible programmatic expenses. Eligible programmatic expenses may include direct costs for:

a. Determining whether RLF cleanup activities at a particular site are authorized by CERCLA 104(k);

b. Ensuring that a RLF cleanup complies with applicable requirements under Federal and State laws, as required by CERCLA 104(k);

c. Ensuring that public participation requirements are met. This includes developing or funding a community relations plan which will include reasonable notice, opportunity for involvement, and response to comments;

d. Establishing an administrative record for each site;

e. Ensuring the adequacy of each RLF cleanup as it is implemented, including overseeing the borrowers and/or subgrantees activities to ensure compliance with applicable Federal and State environmental requirements;

f. The development of Quality Assurance Project Plans (QAPPs) as required by Part 31 and Part 30 regulations;

g. Ensuring that the site is secure if a borrower or subgrant recipient is unable or unwilling to complete a brownfield cleanup;

h. Preparing an analysis of brownfield cleanup alternatives which will include information about the site and contamination issues (i.e., exposure pathways, identification of contaminant sources, etc.);

cleanup standards; applicable laws; alternatives considered; and the proposed cleanup. The evaluation of alternatives must include effectiveness, implementability, and the cost of the response proposed. The evaluation will include an analysis of reasonable alternatives including no action;

- i. For petroleum sites, an analysis of cleanup alternatives would include considering a range of proven cleanup methods including identification of contaminant sources, exposure pathways, and an evaluation of corrective measures;
- j. Using a portion of a loan or subgrant to purchase environmental insurance for the site. The loan or subgrant may not be used to purchase insurance intended to provide coverage for any of the Ineligible Uses under Section D.
- k. Any other eligible programmatic costs including costs incurred by the recipient in making and managing a loan; obtaining financial management services; quarterly reporting to EPA; awarding and managing subgrants to the extent allowable in III. D. 2.; and carrying out outreach pertaining to the loan and subgrant program to potential borrowers and subgrant recipients; and
- l. Subgrantee progress reporting to the CAR is an eligible programmatic cost.

3. No more than 10% of the funds awarded by this agreement may be used by the CAR itself as a programmatic cost for brownfield program development and implementation (including monitoring of health and institutional controls) as described in the EPA approved workplan. The CAR must maintain records on any and all funds used to carry out program development and/or health monitoring and institutional control activities to ensure that no more than 10% of its funds were used in that manner.

4. If the CAR makes a subgrant to a local government that includes an amount (not to exceed 10% of the subgrant) for brownfields program development and implementation, the terms and conditions of that agreement must include a provision that ensures that the local government subgrantee maintains records adequate to ensure compliance with the limits on the amount of subgrant funds that may be expended for this purpose.

**C. Ineligible Uses of the Funds for the Cooperative Agreement Recipient, Borrower, and/or Subgrant Recipients**

- 1. Cooperative agreement funds shall not be used by the CAR, borrower and/or subgrant recipient for any of the following activities:
  - a. Pre-cleanup environmental assessment activities, such as site assessment, identification, and characterization with the exception of site monitoring activities that are reasonable and necessary during the cleanup process, including determination of the effectiveness of a cleanup.
  - b. Monitoring and data collection necessary to apply for, or comply with, environmental permits under other federal and state laws, unless such a permit is required as a component of the cleanup action.
  - c. Construction, demolition, and development activities that are not cleanup actions (e.g., marketing of property or construction of a new non-cleanup facility), and addressing public or private drinking water supplies that have deteriorated through ordinary use;
  - d. Job training unrelated to performing a specific cleanup at a site covered by a loan or subgrant.
  - e. To pay for a penalty or fine.
  - f. To pay a federal cost share requirement (for example, a cost-share required by another Federal grant) unless there is specific statutory authority.
  - g. To pay for a response cost at a brownfield site for which the recipient of the grant or loan is potentially liable under CERCLA §107.
  - h. To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the cleanup.
  - i. Unallowable costs (e.g., lobbying and fund raising) under applicable OMB Circulars.

2. Under CERCLA 104(k)(4)(B), administrative costs are prohibited costs under this agreement. Prohibited administrative costs include all indirect costs under applicable OMB Circulars incurred by the CAR and subgrantees.

a. Ineligible administrative costs include costs incurred in the form of salaries, benefits, contractual costs, supplies, and data processing charges, incurred to comply with most provisions of the *Uniform Administrative Requirements for Grants* contained in 40 CFR Part 30 or 40 CFR part 31. Direct costs for grant and subgrant administration, with the exception of costs specifically identified as eligible programmatic costs, are ineligible even if the grantee or subgrant recipient is required to carry out the activity under the grant agreement. Costs incurred to report quarterly performance to EPA under the grant are eligible.

b. Ineligible grant or subgrant administration costs include direct costs for:

i. Preparation of applications for US EPA Brownfield grants/subgrants;

ii. Record retention required under 40 CFR 30.53 and 40 CFR 31.42;

iii. Record-keeping associated with supplies and equipment purchases required under 40 CFR 30.33, 30.34, and 30.35 and 40 CFR 31.32 and 31.33;

iv. Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 40 CFR 30.25 and 40 CFR 31.30;

v. Maintaining and operating financial management systems required under 40 CFR 30 and 40 CFR 31;

vi. Preparing payment requests and handling payments under 40 CFR 30.22 and 40 CFR 31.21;

vii. Non-federal audits required under 40 CFR 30.26, 40 CFR 31.26, and OMB Circular A-133; and

viii. Close out under 40 CFR 30.71 and 40 CFR 31.50.

ix. Borrowers are subject to the CERCLA 104(k)(4)(B) administrative cost prohibition requirements. The CAR must ensure that loan agreements prohibit borrowers and subgrantees from using loans financed with cooperative agreement funds for administrative costs.

c. Prohibited administrative costs for the borrower (including those in the form of salaries, benefits, contractual costs, supplies, and data processing charges) are those incurred for loan administration and overhead costs.

d. Direct costs for loan administration are ineligible even if the borrower is required to carry out the activity under the loan agreement. Ineligible loan administration costs include expenses for:

i. Preparation of applications for loans and loan agreements;

ii. Preparing revisions and changes in the budget, workplans, and other documents required under the loan agreement;

iii. Maintaining and operating financial management and personnel systems;

iv. Preparing payment requests and handling payments; and

v. Audits.

vi. Overhead costs by the borrower that do not directly clean up brownfield site contamination or comply with laws applicable to the cleanup are ineligible administrative costs. Examples of overhead costs that would be ineligible in loans include expenses for:

vii. Salaries, benefits and other compensation for person who are not directly engaged in the cleanup of the site (e.g., marketing and human resource personnel);

- viii. Facility costs such as depreciation, utilities, and rent on the borrower's administrative offices; and
- ix. Supplies and equipment not used directly for cleanup at the site.
- x. Costs incurred by the borrower for procurement are eligible only if the procurement contract is for services or products that are direct costs for performing the cleanup, for insurance costs, or for maintenance of institutional controls.
- xi. Direct costs by the borrower for progress reporting to the lender are eligible programmatic costs.
- 3. Cooperative agreement funds may not be used for any of the following properties:
  - a. Facilities listed, or proposed for listing, on the National Priorities List (NPL);
  - b. Facilities subject to unilateral administrative orders, court orders, administrative orders on consent or judicial consent decree issued to or entered by parties under CERCLA;
  - c. Facilities that are subject to the jurisdiction, custody or control of the United States government except land held in trust by the United States government for an Indian tribe; or
  - d. A site excluded from the definition of a brownfield site for which EPA has not made a property-specific funding determination.

#### **D. Subgrant Recipient and Borrower Eligibility**

- 1. The CAR may only provide cleanup subgrants to an eligible entity or nonprofit organization to clean up sites *owned* by the eligible entity or nonprofit organization at the time the subgrant is awarded. Eligible subgrant recipients include eligible entities as defined under CERCLA 104(k)(1) and non profit organizations as defined at Section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999. Nonprofit organizations described in Section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act of 1995 are not eligible for subgrants.
  - a. The subgrant recipient must retain ownership of the site throughout the period of performance of the subgrant. For the purposes of this agreement, the term "owns" means fee simple title unless EPA approves a different arrangement. ***The CAR may not provide a subgrant to itself or another component of its own unit of government or organization.***
  - b. The CAR may discount loans for those eligible entities identified in CERCLA section 104(k)(1) and non profit organizations as defined at Section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999. This definition includes non profit universities and other non profit educational institutions. ***Private, for-profit entities are not eligible for discounted loans.***
  - c. The CAR shall not loan or subgrant funds that will be used to pay for cleanup activities at a site for which a loan or grant recipient is potentially liable under CERCLA § 107. The CAR may rely on its own investigation which can include an opinion from the subgrant recipient's or borrower's counsel. However, the CAR must advise the borrower or subgrant recipient that the investigation and/or opinion of the subgrant recipient's or borrower's counsel is not binding on the Federal Government.
  - d. For approved eligible petroleum-contaminated brownfield sites, the person cleaning up the site must be a person who is not potentially liable for cleaning up the site. For brownfield grant purposes, an entity generally will not be considered potentially liable for petroleum contamination if it has not dispensed or disposed of petroleum or petroleum-product at the site, has not exacerbated the contamination at the site, and took reasonable steps with regard to the contamination at the site.
  - e. The CAR shall maintain sufficient documentation supporting and demonstrating the eligibility of the sites, borrowers, and subgrant recipients.
  - f. A borrower or subgrant recipient must submit information regarding its overall environmental compliance history including any penalties resulting from environmental non-compliance at the site subject to the loan or subgrant. The CAR, in consultation with the EPA, must consider this history in its analysis of the borrower or subgrant recipient as a cleanup and business risk.



- g. An entity that is currently suspended, debarred, or otherwise declared ineligible cannot be a borrower or subgrant recipient.

**E. Obligations for Grant Recipients, Borrowers, or Subgrantees Asserting a Limitation on Liability from CERCLA §107**

1. Grant recipients, borrowers, or subgrantees who are eligible, or seek to become eligible, to receive a grant, loan, or subgrant based on a liability protection from CERCLA as a: (1) bona fide prospective purchaser (BFPP), (2) contiguous property owner (CPO), or (3) innocent landowner (ILO) (known as the "landowner liability protections"), must meet certain threshold criteria and satisfy certain continuing obligations to maintain their status as an eligible grant recipient, borrower, or subgrantee. These include, but are not limited to the following:

a. All grant recipients, borrowers, or subgrantees asserting a BFPP, CPO or ILO limitation on liability must perform (or have already performed) "all appropriate inquiry," as found in section 101(35)(B) of CERCLA, on or before the date of acquisition of the property.

b. Grant recipients, borrowers, or subgrantees seeking to qualify as bona fide prospective purchasers or contiguous property owners must not be:

- i. potentially liable, or affiliated with any other person that is potentially liable,
- ii. for response costs at the facility through (a) any direct or indirect familial
- iii. relationship; or (b) any contractual, corporate, or financial relationships; or
- iv. a reorganized business entity that was potentially liable or

v. otherwise liable under CERCLA §107(a) as a prior owner or operator, or generator or transporter of hazardous substances to the facility.

c. Landowners must meet certain continuing obligations in order to achieve and maintain status as a landowner protected from CERCLA liability. These continuing obligations include:

- i. complying with any land use restrictions established or relied on in connection with the response action at the vessel or facility and not impeding the effectiveness or integrity of institutional controls;
- ii. taking reasonable steps with respect to hazardous substance releases;
- iii. providing full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration;

iv. complying with information requests and administrative subpoenas (applies to bona fide prospective purchasers and contiguous property owners); and

v. complying with legally required notices (again, applies to bona fide prospective purchasers and contiguous property owners) [see CERCLA § 101(40)(B)-(H), 107(q)(1)(A), 101(35)(A)-(B).].

d. CERCLA requires additional obligations to maintain liability protection. These obligations are found at §§ 101(35), 101(40), 107(b), 107(q) and 107(r).

**2. Use of Program Income**

a. In accordance with 40 CFR 31.25(g)(2), the CAR is authorized to add program income to the funds awarded by the EPA and use the program income under the same terms and conditions of this agreement. Program income for the RLF shall be defined as the gross income received by the recipient, directly generated by the cooperative agreement award or earned during the period of the award. Program income shall include principal repayments, interest earned on outstanding loan principal, interest earned on accounts holding RLF program income not needed for immediate lending, all loan fees and loan-related charges received from borrowers and other income generated from RLF operations including proceeds from the sale, collection, or liquidations of assets acquired through defaults of loans.

b. In accordance with Section 104(d)(3)(D), when (and if) a CAR transitions to a 104(k) cooperative

agreement, any program income (e.g. fees, interest or principal repayments) generated prior to transition will be added to the 104(k) agreement and must be used in a manner consistent with Section 104(k)(3) and with the terms and conditions, contained herein.

c. The CAR may use program income from fees, interest payments from loans, and other forms of eligible program income to meet its cost-share. The CAR shall not use repayments of principal of loans to meet the CAR's cost-share requirement. Repayments of principal must be returned to the CAR's Brownfield cleanup revolving fund.

d. The CAR that elects to use program income to cover all or part of a RLF's programmatic costs shall maintain adequate accounting records and source documentation to substantiate the amount and percent of program income expended for eligible RLF programmatic costs, and comply with applicable OMB cost principles when charging costs against program income. For any cost determined by the EPA to have been an ineligible use of program income, the recipient shall reimburse the RLF or the EPA. EPA will notify the recipient of the time period allowed for reimbursement.

e. Loans or subgrants made with a combination of program income and direct funding from EPA are subject to the same terms and conditions as those applicable to this agreement. Loans and subgrants made with direct funding from EPA in combination with non Federal sources of funds are also subject to the same terms and conditions of this agreement.

f. CAR must obtain EPA approval of the substantive terms of loans and subgrants made entirely with program income.

#### H. Post Cooperative Agreement Program Income

1. After the end of the award period, the CAR shall use program income in a manner consistent with the terms and conditions of a "close out" agreement negotiated with EPA. In accordance with 40 CFR 31.42(c)(3), the CAR shall maintain appropriate records to document compliance with the requirements of the close out agreement (i.e., records relating to the use of post-award program income). EPA may request access to these records or may negotiate post-close-out reporting requirements to verify that post-award program income has been used in accordance with the terms and conditions of the close out agreement.

#### 2. Interest-Bearing Accounts

a. The CAR must deposit advances of grant funds and program income (e.g., fees, interest payments, repayment of principal) in an interest bearing account.

b. Interest earned on advances, CARs and subgrant recipients are subject to the provisions of 40 CFR §31.21(i) and §30.22(l) relating to remitting interest on advances to EPA on a quarterly basis.

c. Interest earned on program income is considered additional program income.

### IV. ENVIRONMENTAL CLEANUP REQUIREMENTS

#### A. Authorized RLF Cleanup Activities

1. The CAR shall prepare an analysis of brownfield cleanup alternatives which will include information about the site and contamination issues (i.e., exposure pathways, identification of contaminant sources, etc.); cleanup standards; applicable laws; alternatives considered; and the proposed cleanup. The evaluation of alternatives must include effectiveness, implementability, and the cost of the response proposed. The evaluation will include an analysis of reasonable alternatives including no action. The clean up method chosen must be based on this analysis.

2. For cleanup of petroleum sites, an analysis of cleanup alternatives must include considering a range of proven cleanup methods including identification of contaminant sources, exposure pathways, and an evaluation of corrective measures. The clean up method chosen must be based on this analysis.

3. Prior to conducting or engaging in any on-site activity with the potential to impact historic properties (such as invasive sampling or cleanup), the grantee shall consult with EPA regarding potential applicability of the National Historic Preservation Act and, if applicable, shall assist EPA in complying with any requirements of the Act and implementing regulations.

## **B. Quality Assurance (QA) Requirements**

1. If environmental samples are to be collected as part of the brownfield cleanup (e.g., cleanup verification sampling, post-cleanup confirmation sampling), the CAR shall comply with 40 CFR Part 31.45 (or 40 CFR Part 30.54 requirements for nonprofit organizations) requirements to develop and implement quality assurance practices sufficient to produce data adequate to meet project objectives and to minimize data loss. State law may impose additional QA requirements.

## **C. Community Relations and Public Involvement in RLF Cleanup Activities**

1. All RLF loan and subgrant cleanup activities require a site-specific community relations plan that includes providing reasonable notice, opportunity for involvement, response to comments, and administrative records that are available to the public.

## **D. Administrative Record**

1. The CAR shall establish an administrative record that contains the documents that form the basis for the selection of a cleanup plan. Documents in the administrative record shall include an analysis of reasonable alternatives including no action; site investigation reports; the cleanup plan; cleanup standards used; responses to public comments; and verification that shows that cleanups are complete. The CAR shall keep the administrative record available at a location convenient to the public and make it available for inspection.

## **E. Implementation of RLF Cleanup Activities**

1. The CAR shall ensure the adequacy of each RLF cleanup in protecting human health and the environment as it is implemented. Each loan and subgrant agreement shall contain terms and conditions that allow the CAR to change cleanup activities as necessary based on comments from the public or any new information acquired.

2. If the borrower or subgrant recipient is unable or unwilling to complete the RLF cleanup, the CAR shall ensure that the site is secure. The CAR shall notify the appropriate state agency and the U.S. EPA to ensure an orderly transition should additional activities become necessary.

## **F. Completion of RLF Cleanup Activities**

1. The CAR shall ensure that the successful completion of a RLF cleanup is properly documented. This must be done through a final report or letter from a qualified environmental professional, or other documentation provided by a State or Tribe that shows cleanups are complete. This documentation needs to be included as part of the administrative record.

# **V. REVOLVING LOAN FUND REQUIREMENTS**

## **A. Prudent Lending and Subgranting Practices**

1. The CAR is expected to establish economically sound structures and day-to-day management and processing procedures to maintain the RLF and meet long-term brownfield cleanup lending/subgranting objectives. These include establishing: underwriting principles that can include the establishment of interest rates, repayment terms, fee structure, and collateral requirements; and, lending/subgranting practices that can include loan/subgrant processing, documentation, approval, servicing, administrative procedures, collection, and recovery actions.

2. The CAR shall not incur costs under this cooperative agreement for loans, subgrants or other eligible costs until an RLF grant workplan has been submitted to and approved by U.S. EPA. The CAR shall ensure that the objectives of the workplan are met through its or the fund manager's selection and structuring of individual loans/subgrants and lending/subgranting practices. These activities shall include, but not be limited to the following:

a. Considering awarding subgrants on a competitive basis. If the CAR decides not to award any subgrants competitively, it must document the basis for that decision and inform EPA.

- b. Establishing appropriate project selection criteria consistent with Federal and state requirements, the intent of the RLF program, and the cooperative agreement entered into with EPA.
- c. Establishing threshold eligibility requirements whereby only eligible borrowers or subgrant recipients receive RLF financing.
- d. Developing a formal protocol for potential borrowers or subgrant recipients to demonstrate eligibility, based on the procedures described in the initial RLF application proposal and cooperative agreement application. Such a protocol shall include descriptions of projects that will be funded, how loan monies will be used, and qualifications of the borrower or subgrant recipient to make legitimate use of the funds. Additionally, CARs shall ask borrowers or subgrant recipients for an explanation of how a project, if selected, would be consistent with RLF program objectives, statutory requirements and limitations, and protect human health and the environment.
- e. Requiring that borrowers or subgrant recipients submit information describing the borrower's or subgrant recipient's environmental compliance history. The CAR shall consider this history in an analysis of the borrower or subgrant recipient as a cleanup and business risk.
- f. Establishing procedures for handling the day-to-day management and processing of loans and repayments.
- g. Establishing standardized procedures for the disbursement of funds to the borrower or subgrant recipient.

#### **B. Inclusion of Special Terms and Conditions in RLF Loan and Subgrant Documents**

1. The CAR shall ensure that the borrower or subgrant recipient meets the cleanup and other program requirements of the RLF grants by including the following special terms and conditions in RLF loan agreements and subgrant awards:
  - a. Borrowers or subgrant recipients shall use funds only for eligible activities and in compliance with the requirements of CERCLA 104(k) and applicable Federal and State laws and regulations. See Section I.A.2.
  - b. Borrowers or subgrant recipients shall ensure that the cleanup protects human health and the environment.
  - c. Borrowers or subgrant recipients shall document how funds are used. If a loan or subgrant includes cleanup of a petroleum-contaminated brownfield site(s), the CAR shall include a term and condition requiring that the borrower or subgrant recipient maintain separate records for costs incurred at that site(s).
  - d. Borrowers or subgrant recipients shall maintain records for a minimum of three years following completion of the cleanup financed all or in part with RLF funds. Borrowers or subgrant recipients shall obtain written approval from the CAR prior to disposing of records. Cooperative agreement recipients shall also require that the borrower or subgrant recipient provide access to records relating to loans and subgrants supported with RLF funds to authorized representatives of the Federal government.
  - e. Borrowers or subgrant recipients shall certify that they are not currently, nor have they been, subject to any penalties resulting from environmental non-compliance at the site subject to the loan.
  - f. Borrowers or subgrant recipients shall certify that they are not potentially liable under §107 of CERCLA for the site or that, if they are, they qualify for a limitation or defense to liability under CERCLA. If asserting a limitation or defense to liability, the borrower or subgrant recipient must state the basis for that assertion. When using grant funds for petroleum-contaminated brownfield sites, borrowers or subgrant recipients shall certify that they are not a viable responsible party or potentially liable for the petroleum contamination at the site. Refer to the most recent issue of EPA's *Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund and Cleanup Grants* for a discussion of these terms. The CAR may consult with EPA for assistance with this matter.

- g. Borrowers or subgrant recipients shall conduct cleanup activities as required by the CAR.
- h. Subgrant recipients shall comply with applicable EPA assistance regulations (40 CFR Part 31 for governmental entities or 40 CFR Part 30 for nonprofit organizations). All procurements conducted with subgrant funds must comply with 40 CFR Part 31.36 or 40 CFR Part 30.40-30.48, as applicable.

#### **C. Default**

1. In the event of a loan default, the CAR shall make reasonable efforts to enforce the terms of the loan agreement including proceeding against the assets pledged as collateral to cover losses to the loan. If the cleanup is not complete at the time of default, the CAR is responsible for: (1) documenting the nexus between the amount paid to the borrower (bank or other financial institution) and the cleanup that took place prior to the default; and (2) securing the site (e.g., ensuring public safety) and informing the EPA Project Officer and the State.

#### **D. Conflict of Interest**

1. The CAR shall establish and enforce conflict of interest provisions that prevent the award of subgrants that create real or apparent personal conflicts of interest, or the CAR's appearance of lack of impartiality. Such situations include, but are not limited to, situations in which an employee, official, consultant, contractor, or other individual associated with the CAR (affected party) approves or administers a grant or subgrant to a subgrant recipient in which the affected party has a financial or other interest. Such a conflict of interest or appearance of lack of impartiality may arise when:

- a. The affected party,
  - b. Any member of his immediate family,
  - c. His or her partner, or
  - d. An organization which employs, or is about to employ, any of the above,
- has a financial or other interest in the subgrant recipient.

Affected employees will neither solicit nor accept gratuities, favors, or anything of monetary value from subgrant recipients. Recipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by affected parties.

### **VI. DISBURSEMENT, PAYMENT AND CLOSEOUT**

For the purposes of these terms and conditions, the following definitions apply: "payment" is the U.S. EPA's transfer of funds to the CAR; the CAR incurs an "obligation" when it enters into a loan agreement with the borrower or subgrant recipient; "disbursement" is the transfer of funds from the CAR to the borrower or subgrant recipient. "Close out" refers to the process that the U.S. EPA follows to both ensure that all administrative actions and work required under the cooperative agreement have been completed, and, to establish a closeout agreement to govern the use of program income.

#### **A. Payment Schedule**

1. The CAR may request payment from EPA pursuant to 40 CFR §31.21(c) after it incurs an obligation or has an eligible programmatic expense. EPA will make payments to the CAR on a schedule which minimizes the time elapsing between transfer of funds from EPA and disbursement by the recipient to the borrower or subgrant recipient to pay costs incurred or to meet a "progress payment" schedule. The recipient may request payments when it receives a disbursement request from a borrower or subgrant recipient based on the borrower or subgrant recipient's incurred costs under the "actual expense" method or the schedule for disbursement under the "schedule" disbursement method. The CAR shall disburse accrued program income to meet all or part of this obligation or eligible programmatic expenses prior to requesting payment from EPA.

#### **B. Methods of Disbursement**

1. The CAR may choose to disburse funds to the borrower by means of 'actual expense' or 'schedule.' If the schedule method is used, the recipient must ensure that the schedule is designed to reasonably approximate the borrower's incurred costs.

a. An 'actual expense' disbursement approach requires the borrower to submit documentation of the borrower's expenditures (e.g., invoices) to the CAR prior to requesting payment from EPA.

b. A 'schedule' disbursement is one in which all, or an agreed upon portion, of the obligated funds are disbursed to the borrower on the basis of an agreed upon schedule (e.g., progress payments) or, in unusual circumstances, upon execution of the loan. The CAR shall submit documentation of disbursement schedules to EPA.

c. If the disbursement schedule of the loan agreement calls for disbursement of the entire amount of the loan upon execution, the CAR shall demonstrate to the U.S. EPA Project Officer that this method of disbursement is necessary for purposes of cleaning up the site covered by the loan. Further, the CAR shall include an appropriate provision in the loan agreement which ensures that the borrower uses loan funds promptly for costs incurred in connection with the cleanup and that interest accumulated on schedule disbursements is applied to the cleanup.

d. Subgrant funds must be disbursed to the subgrant recipient in accordance with 40 CFR 31.21 or 40 CFR 30.22, as applicable.

e. The CAR may negotiate a predetermined schedule(s) for disbursement to subgrant recipients provided the schedule minimizes the time elapsing between disbursement by the CAR and the subgrant recipient's payment of costs incurred in carrying out the subgrant.

f. If the disbursement schedule of the subgrant calls for disbursement of the entire amount of the subgrant upon execution, the CAR shall demonstrate to the U.S. EPA Project Officer that this method of disbursement is necessary for purposes of cleaning up the site covered by the subgrant. Further, the CAR shall include an appropriate provision in the subgrant agreement which ensures that the subgrant recipient uses funds promptly for costs incurred in connection with the cleanup and that interest accumulated on schedule disbursements is applied to the cleanup.

### C. Schedule for Closeout

1. There are two fundamental criteria for closeout:

a. Final payment of funds from EPA to the CAR following expiration of the terms of the agreement or expenditure of the funds awarded; and

b. Completion of all cleanup activities funded by the amount of the award.

2. The first criterion of cooperative agreement closeout is met when the CAR receives all payments from EPA. The second closeout criterion is met when all cleanup activities funded by the initial amount of the award are complete.

3. The CAR must negotiate a closeout agreement with EPA to govern the use of program income after closeout. Eligible uses include: continuing to operate a RLF for brownfield cleanup and/or other brownfield activities.

4. The closeout agreement will require that any assessments or cleanups financed with program income be consistent with the CERCLA Section 107 prohibitions and site eligibility limitations contained within these Terms and Conditions.

5. A draft closeout agreement (model available upon request) is due to your Project Officer within 90 days of meeting the conditions in C. 2 above, and prior to the acceptance of any loan repayments; or, at the very latest, by the end of the 3rd year (36th month) of the Cooperative Agreement, whichever comes first. See II.A.2 above.

#### D. Compliance with Closeout Schedule

1. If a CAR fails to comply with the closeout schedule, any cooperative agreement funds not obligated under loan agreement to a borrower or subgrant recipient may be subject to federal recovery, and the cooperative agreement award amended to reflect the reduced amount of the cooperative agreement.

#### E. Recovery of RLF Assets

1. In case of termination for cause or convenience, the CAR shall return to EPA its fair share of the value of the RLF assets consisting of cash, receivables, personal and real property, and notes or other financial instruments developed through use of the funds. EPA's fair share is the amount computed by applying the percentage of EPA participation in the total capitalization of the RLF to the current fair market value of the assets thereof. EPA also has remedies under 40 CFR 31.43 and CERCLA 104(k) when the Agency determines that the value of such assets has been reduced by improper/illegal use of cooperative agreement funding. In such instances, the CAR may be required to compensate EPA over and above the Agency's share of the current fair market value of the assets. Nothing in this agreement limits EPA's authorities under CERCLA to recover response costs from a potentially responsible party.

#### F. Loan Guarantees

1. If the CAR chooses to use the RLF funds to support a loan guarantee approach, the following terms & conditions apply:

a. The CAR shall:

i. document the relationship between the expenditure of CERCLA §104(k) funds and cleanup activities;

ii. maintain an escrow account expressly for the purpose of guaranteeing loans, by following the payment requirement described under the Escrow Requirements term and condition below; and

iii. ensure that cleanup activities guaranteed by RLF funds are carried out in accordance with CERCLA 104(k) and applicable Federal and State laws and will protect human health and the environment.

b. Payment of funds to a CAR shall not be made until a guaranteed loan has been issued by a participating financial institution. Loans guaranteed with RLF funds shall be made available as needed for specified cleanup activities on an "actual expense" or "schedule" basis to the borrower or subgrant recipient (See Section on Methods of Disbursement). The CAR's escrow arrangement shall be structured to ensure that the CERCLA §104(k) funds are properly "disbursed" by the recipient for the purposes of the assistance agreement as required by 40 CFR §31.20(b)(7) and §31.21(c). If the funds are not properly disbursed, the CERCLA §104(k) funds that the recipient places in an escrow account will be subject to the interest recovery provisions of 40 CFR §31.21(i).

c. To ensure that funds transferred to the CAR are disbursements of assisted funds, the escrow account shall be structured to ensure that:

i. the recipient cannot retain the funds;

ii. the recipient must not have access to the escrow funds on demand;

iii. the funds remain in escrow unless there is a default of a guaranteed loan;

iv. the organization holding the escrow (i.e., the escrow agency), shall be a bank or similar financial institution that is independent of the recipient; and

v. there must be an agreement with financial institutions participating in the guaranteed loan program which documents that the financial institution has made a guaranteed loan to clean up a brownfield site in exchange for access to funds held in escrow in the event of a default by the borrower or subgrant recipient.

d. Federal Obligation to the Loan Guarantee Program

i. Any obligations that the CAR incurs for loan guarantees in excess of the amount awarded under the cooperative agreement are the CAR's responsibility. This limitation on the extent of the Federal Government's financial commitment to the CAR's loan guarantee program shall be communicated to all participating banks and borrower or subgrant recipient.

e. Repayment of Guaranteed Loans

i. Upon repayment of a guaranteed loan and release of the escrow amount by the participating financial institution, the CAR shall return the cooperative agreement funds placed in escrow to the U.S. EPA. Alternatively, the CAR may, with EPA approval,

1) Guarantee additional loans under the terms and conditions of the agreement or,

amend the terms and conditions of the agreement to provide for another disposition of funds that will redirect the funds for other brownfield related activities.



**Terms & Conditions**  
**of U.S. EPA Assistance Agreement # BF-00E48101-0 (May 27, 2008)**  
**(applicable, in part, to**  
**Assistance Amendment # BL-00E48101-1 (September 10, 2008))**

## **Administrative Conditions**

### **COPYRIGHTED MATERIAL**

In accordance with 40 CFR 31.34 for State, local and Indian Tribal governments or 40 CFR 30.36 for other recipients, EPA has the right to reproduce, publish, use, and authorize others to use copyrighted works or other data developed under this assistance agreement for Federal purposes.

Examples of a Federal purpose include but are not limited to: (1) Use by EPA and other Federal employees for official Government purposes; (2) Use by Federal contractors performing specific tasks for the Government; (3) Publication in EPA documents provided the document does not disclose trade secrets (e.g. software codes) and the work is properly attributed to the recipient through citation or otherwise; (4) Reproduction of documents for inclusion in Federal depositories; (5) Use by State, tribal and local governments that carry out delegated Federal environmental programs as "co-regulators" or act as official partners with EPA to carry out a national environmental program within their jurisdiction and; (6) Limited use by other grantees to carry out Federal grants provided the use is consistent with the terms of EPA's authorization to the other grantee to use the copyrighted works or other data.

Under Item 6, the grantee acknowledges that EPA may authorize another grantee(s) to use the copyrighted works or other data developed under this grant as a result of:

- a. the selection of another grantee by EPA to perform a project that will involve the use of the copyrighted works or other data or;
- b. termination or expiration of this agreement.

In addition, EPA may authorize another grantee to use copyrighted works or other data developed with Agency funds provided under this grant to perform another grant when such use promotes efficient and effective use of Federal grant funds.

### **DRUG-FREE WORKPLACE CERTIFICATION FOR ALL EPA RECIPIENTS**

The recipient organization of this EPA assistance agreement must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 40 CFR 36.200 - 36.230. Additionally, in accordance with these regulations, the recipient organization must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award.

Those recipients who are individuals must comply with the drug-free provisions set forth in Title 40 CFR 36.300.

The consequences for violating this condition are detailed under Title 40 CFR 36.510. Recipients can access the Code of Federal Regulations (CFR) Title 40 Part 36 at [http://www.access.gpo.gov/nara/cfr/waisidx\\_06/40cfr36\\_06.html](http://www.access.gpo.gov/nara/cfr/waisidx_06/40cfr36_06.html).

### **FEDERAL CASH TRANSACTION REPORT**

The SF272 report is due within 15 working days following December 31 of any given calendar year. This form must be submitted to: *U.S. EPA, LVFC, P.O. Box 98515, Las Vegas, NV 89193-8515*. For more information contact: Richard Sherburne, LVFC at 702-798-2494.

### **HOTEL-MOTEL FIRE SAFETY**

Pursuant to 40 CFR 30.18, if applicable, and 15 USC 2225a, the recipient agrees to ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended). Recipients may search the Hotel-Motel National Master List at <http://www.usfa.dhs.gov/applications/hotel/> to see if a property is in compliance (FEMA ID is currently not required), or to find other information about the Act.

### **LOBBYING AND LITIGATION - ALL RECIPIENTS**

The chief executive officer of this recipient agency shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against

the United States unless authorized under existing law. The recipient shall abide by its respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of federal grant funds for litigation against the United States or for lobbying or other political activities.

## MANAGEMENT FEES

Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

## MBE/WBE REQUIREMENTS

In accordance with EPA's Program for Utilization of Small, Minority and Women's Business Enterprises in procurement under assistance programs, the recipient agrees to:

- a) Accept the applicable FY 2008 "fair share" goals negotiated with EPA by the Indiana Department of Environmental Management as follows:

Combined Rate   **MBE**   5%      **WBE**   6%

If the recipient does not want to rely on applicable State's MBE/WBE goals, the recipient agrees to submit proposed MBE/WBE goals based on availability of qualified minority and women-owned businesses to do work in relevant market for construction, services, supplies and equipment. "Fair share" objectives must be submitted the MBE Coordinator within 30 days of award and approved by EPA no later than 30 days thereafter.

- b) Ensure to the fullest extent possible that at least the FY 2008 "fair share" objective [see a) above] of Federal funds for prime contractors or subcontracts for supplies, construction, equipment or services are made available to organizations owned or controlled by socially and economically disadvantaged individuals, women and historically black colleges and universities.
- c) Include in bid documents "fair share" objectives of 2008 fair share percentage [see a) above] and require all of its contractors to include in their bid documents for subcontracts the negotiated fair share percentages.
- d) Follow the six affirmative steps stated in 40 CFR 30.44(b) 40 CFR 31.36(e), 35.3145(d), or 35.6580, as appropriate.
- e) The recipient agrees to submit an EPA form 5700-52A "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" beginning with the Federal fiscal year quarter the recipient receives the award and continuing until the project is completed. These reports must be submitted to Adrienne M. Callahan, MBE Coordinator within 30 days of the end of the Federal fiscal quarter (January 30, April 30, July 30, and October 30). For assistance awards for continuing environmental programs (40 CFR Part 35, Subpart B) and assistance awards with institutions of higher education, hospitals and other non-profit organizations, the recipient agrees to submit an EPA form 5700-52A to Adrienne M. Callahan, MBE Coordinator by October 30 of each year. (Reporting form available at [www.epa.gov/osdbu](http://www.epa.gov/osdbu).) Submit reports to:

Adrienne M. Callahan, Region 5 MBE/WBE Coordinator  
USEPA, Acquisition and Assistance Branch  
77 West Jackson Boulevard (MC-10J)  
Chicago, IL 60604

- f) In the event race and/or gender neutral efforts prove to be inadequate to achieve a fair share objective for MBE/WBEs, the recipient agrees to notify EPA in advance of any race and/or gender conscious action it plans to take to more closely achieve the fair share objective.

- g) Until the recipient has completed its fair share negotiations with EPA, it agrees to maintain state Agency's fair share objectives. Once the recipient has completed its fair share negotiations with EPA, it will apply those objectives. The recipient also agrees to include in its bid documents the applicable FY 2008 "fair share" objectives and require all of its prime contractors to include in their bid documents for subcontracts the applicable FY 2008 "fair share" percentages and to comply with paragraphs (c) through (e) above.

EPA may take correction action under 40 CFR Parts 30, 31 and 35, as appropriate, if the recipient fails to comply with these terms and conditions.

For further information, please contact Adrienne Callahan at 312-353-5556, email: [Callahan.adrienne@epa.gov](mailto:Callahan.adrienne@epa.gov)

#### **MULTI-YEAR GRANT - INTERIM FINANCIAL STATUS REPORTS**

An interim Financial Status Report - also called the SF269 - must be submitted annually within 90 days following the end of each 12-month period. All interim FSRs must be submitted to the EPA Grants Specialist as identified on page one of this Assistance Agreement.

#### **NATIONAL HISTORIC PRESERVATION ACT**

Prior to conducting or engaging in any on-site activity with the potential to impact historic properties (such as invasive sampling or cleanup), the grantee shall consult with EPA regarding potential applicability of the National Historic Preservation Act and, if applicable shall assist EPA in complying with any requirements of the Act and implementing regulations.

#### **PROCUREMENT OF RECYCLED PRODUCTS**

##### **STATE AGENCIES AND POLITICAL SUBDIVISIONS:**

Any State agency or agency of a political subdivision of a State which is using appropriated Federal funds shall comply with the requirements set forth in Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962). Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

#### **PROGRAM INCOME**

The disposition of any program income the State generates from fees or other charges will be governed by 40 CFR 31.25. Program income includes the portion of fees and charges the State collects for lead certification exam programs and activities that are attributable to the EPA financial assistance. In accordance with 40 CFR 31.25(g), EPA authorizes the State to both add program income to the amount of the grant to increase the State's lead certification exam programs and activities (40 CFR 31.25(g)(2)), and to meet any cost sharing requirements under agreement (40 CFR 31.25(g)(3)). EPA also authorizes the State to deduct the cost incident to generating program income from gross income to determine program income (40 CFR 31.25(c)). The same terms and conditions as those applicable to the agreement are applicable to the State's use of program income.

The State must maintain records which account for program income and specify how program income has been used. However, if all or part of the program income generated by activities and programs supported by this agreement is not used in accordance with the above condition, the State must deduct all or the appropriate part of the program income from the total allowable costs of this agreement.

#### **RECYCLED PAPER**

In accordance with EPA Order 1000.25 and Executive Order 13101, *Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition*, the recipient agrees to use recycled paper for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration. Please note that Section 901 of E.O. 13101, dated September 14, 1998, revoked E.O. 12873, *Federal Acquisition, Recycling, and Waste*

*Prevention* in its entirety.

## REIMBURSEMENT LIMITATION

EPA's financial obligations to the recipient are limited by the amount of federal funding awarded to date as shown on line 15 in its EPA approved budget. If the recipient incurs costs in anticipation of receiving additional funds from EPA, it does so at its own risk.

## SMALL BUSINESS IN RURAL AREAS

By accepting this agreement, the recipient agrees to comply with Section 129 of Public Law 100-590, the Small Business Administration Reauthorization and Amendment Act of 1988. Therefore, if the recipient awards a contract under this assistance agreement, it will utilize the following affirmative steps relative to Small Business in Rural Areas (SBRAs):

- a. Placing SBRAs on solicitation lists;
- b. Ensuring that SBRAs are solicited whenever they are potential sources;
- c. Dividing total requirements when economically feasible, into small tasks or quantities to permit maximum participation by SBRAs;
- d. Establishing delivery schedules, where the requirements of work will permit, which would encourage participation by SBRAs;
- e. Using the services of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce, as appropriate; and
- f. Requiring the contractor, if it awards subcontracts, to take the affirmative steps in subparagraphs a. through e. of this condition.

## STATUTORY LIMITATION - COST SHARE [PART 30 & 31 RECIPIENTS]

This award and the resulting ratio of funding is based on estimated costs requested in the application. EPA participation in the final total allowable program/project costs (outlays) shall not exceed the statutory limitation of 83 % of total allowable program/project costs or the total funds awarded, whichever is lower.

## SUSPENSION & DEBARMENT: 2 CFR PART 1532

Recipient shall fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons)." Recipient is responsible for ensuring that any lower tier covered transaction as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. Recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

Recipient may access the Excluded Parties List System at [www.epls.gov](http://www.epls.gov). This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

## TRAFFICKING VICTIMS OF 2000 - PART 31 RECIPIENTS

To implement requirements of Section 106 of the Trafficking Victims Protection Act of 2000, as amended, the following provisions apply to this award:

- a. We, as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity: (1) is determined to have violated an applicable prohibition in the Prohibition Statement below; or (2) has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in the Prohibition Statement below through conduct that is either: (a) associated with performance under this award; or (b) imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR part 1532. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in the Prohibition Statement below.

b. Our right to terminate unilaterally that is described in paragraph a of this award term: (1) implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and (2) is in addition to all other remedies for noncompliance that are available to us under this award.

c. You must include the requirements of the Prohibition Statement below in any subaward you make to a private entity.

**Prohibition Statement** - You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or subawards under the award.

## **UNLIQUIDATED OBLIGATIONS - PART 31 RECIPIENTS**

### **Submission of Financial Status Report**

Pursuant to 40 CFR 31.41(b) and 31.50(b), EPA recipients shall submit a final Financial Status Report - also called the SF269 - to EPA's Las Vegas Finance Center (LVFC), within ninety (90) days after the expiration of the budget period end date. **Completed SF269s must be faxed to 702-798-2423 or mailed to the following address: USEPA LVFC, P.O. Box 98515, Las Vegas, NV 89193-8515.** The LVFC will make adjustments, as necessary, to obligated funds after reviewing and accepting a final Financial Status Report. Recipients will be notified and instructed by EPA if they must complete any additional forms for the closeout of the assistance agreement.

EPA may take enforcement actions in accordance with 40 CFR 31.43 if the recipient does not comply with this term and condition.

## **Programmatic Conditions**

### **ENVIRONMENTAL RESULTS - RECIPIENT PERFORMANCE REPORTING**

**Recipients subject to 40 C.F.R. Part 31 (other than recipients of State or Tribal Program grants under 40 C.F.R. Parts 35 Subparts A or B)**

#### **Performance Reports:**

In accordance with 40 C.F.R. §31.40, the recipient agrees to submit performance reports that include brief information on each of the following areas: 1) a comparison of actual accomplishments to the outputs/outcomes established in the assistance agreement workplan for the period; 2) the reasons for slippage if established outputs/outcomes were not met; and 3) additional pertinent information, including, when appropriate, analysis and information of cost overruns or high unit costs.

In accordance with 40 C.F.R. § 31.40 (d), the recipient agrees to inform EPA as soon as problems, delays or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the assistance agreement work plan.

## **Revolving Loan Fund (RLF) Terms and Conditions**

### **I. GENERAL FEDERAL REQUIREMENTS**

#### **A. Federal Policy and Guidance**

##### **1. Cooperative Agreement Recipients:**

- a. In implementing this agreement, the cooperative agreement recipient (CAR) shall comply

with and require that work done by borrowers and subgrant recipients with cooperative agreement funds comply with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 104(k). The CAR will ensure that cleanup activities supported with cooperative agreement funding comply with all applicable Federal and State laws and regulations. The CAR will ensure cleanups are protective of human health and the environment.

b. The CAR must consider whether it is required to have borrowers or subgrant recipients conduct cleanups under a State or Tribal response program. If the CAR chooses not to require borrowers and subgrant recipients to participate in a State or Tribal response program, then the CAR is required to consult with the Environmental Protection Agency (EPA) on each loan or subgrant to ensure the proposed cleanup is protective of human health and environment.

2. Borrowers and Subgrant recipients:

a. A term and condition or other legally binding provision shall be included in all loans and subgrants entered into with the funds under this agreement, or when funds awarded under this agreement are used in combination with non-Federal sources of funds, to ensure that borrowers and subgrant recipients comply with all applicable Federal and State laws and requirements. In addition to CERCLA 104(k), Federal applicable laws and requirements include: 40 CFR 31 and OMB Circular A-87 for governmental recipients of subgrants or 40 CFR 30 and OMB Circular A-122 for non-profit recipients of subgrants and 40 CFR 30 and OMB Circular A-21 for educational institutions recipients of subgrants.

b. CERCLA 104(g) requires that borrowers and subgrantees comply with the prevailing wage rate requirements under the Davis-Bacon Act of 1931 for construction, repair or alteration contracts "funded in whole or in part" with funds provided under this agreement. The CAR must ensure that the borrower or subgrantee obtains recent and applicable wage rates from the U.S. Department of Labor and incorporate them into the construction, alteration or repair contract.

c. The recipient agrees to comply with Executive Order 13202 (Feb. 22, 2001, 66 Fed. Reg. 11225 ) of February 17, 2001, entitled "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally-funded Construction Projects," as amended by Executive Order 13208 (April 11, 2001, 66 Fed. Reg. 18717) of April 6, 2001, entitled "Amendment to Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects.

d. Federal cross-cutting requirements including, but not limited to, MBE/WBE requirements found at 40 CFR 31.36(e) or 40 CFR 30.44(b); OSHA Worker Health & Safety Standard 29 CFR 1910.120; the Uniform Relocation Act; National Historic Preservation Act; Endangered Species Act; and Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333) the Anti Kickback Act (40 USC 276c) and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250.

**B. Eligible Brownfields Site Determinations**

1. The CAR must provide information to EPA about site-specific work prior to incurring

any costs under this cooperative agreement for sites that have not already been pre-approved in the CAR's workplan by the EPA. The information that must be provided includes whether or not the site meets the definition of a brownfield site as defined in §101(39) of CERCLA, the identity of the owner, and the date of acquisition.

2. If the site is excluded from the general definition of a brownfield site, but is eligible for a property-specific funding determination, then the CAR must provide information sufficient for EPA to make a property-specific funding determination. The CAR must provide sufficient information on how financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes. The CAR must not incur costs for cleaning up sites requiring a property-specific funding determination by EPA until the EPA Project Officer has advised the CAR that the Agency has determined that the property is eligible.

3. For any petroleum-contaminated brownfields site that is not included in the CAR's EPA approved workplan, the CAR shall provide sufficient documentation to the EPA prior to incurring costs under this cooperative agreement which includes (see the latest version of EPA's *Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund and Cleanup Grants* for discussion of this element):

- a. that a State has determined that the petroleum site is of relatively low risk, as compared to other petroleum sites in the State;
- b. that the State determines there is "no viable responsible party" for the site;
- c. that the State determines that the person assessing, investigating, or cleaning up the site is a person who is not potentially liable for cleaning up the site; and
- d. that the site is not subject to any order issued under section 9003(h) of the Solid Waste Disposal Act.

This documentation must be prepared by the CAR or the State following contact and discussion with the appropriate petroleum program official.

4. Documentation must include the identity of the State program official contacted, the State official's telephone number, the date of the contact, and a summary of the discussion to reach each determination that the site is of relatively low risk, that there is no viable responsible party and that the person assessing, investigating, or cleaning up the site is a person who is not potentially liable for cleaning up the site. Other documentation provided by a State to the recipient relevant to any of the determinations by the State must also be provided to the EPA Project Officer.

5. If the State chooses not to make the determinations described in 3.a. above, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the requisite determinations.

6. EPA must also make all determinations on the eligibility of petroleum contaminated brownfields sites located on Indian tribal lands. Prior to incurring costs for these sites, the CAR must contact EPA Project Officer and provide the information necessary for EPA to make the determinations described in 3.

## II. GENERAL COOPERATIVE AGREEMENT



## ADMINISTRATIVE REQUIREMENTS

### A. Term of the Agreement

1. The term of an RLF agreement is five years, unless otherwise extended by EPA at the CAR's request.
2. If after 3, EPA determines that the recipient has not made sufficient progress in implementing its RLF, the EPA may terminate the agreement. Sufficient progress is indicated by the grantee having made at least one loan or subgrant.

### B. Substantial Involvement

1. The U.S. EPA may be substantially involved in overseeing and monitoring this cooperative agreement.
  - a. Substantial involvement by the U.S. EPA generally includes administrative activities such as: monitoring; review and approval of procedures for loan and subgrant recipient selection; review of project phases; and approval of substantive terms included in professional services contracts.
  - b. Substantial EPA involvement also includes brownfields property-specific funding determinations described in I. B.1. under EPA and/or State Approvals of Brownfields Sites above. The CAR may also request technical assistance from EPA on which sites qualify as a brownfields site and when determining whether the statutory prohibition found in section 104(k)(4)(B)(i)(IV) of CERCLA applies. Generally, this prohibition prohibits a grant or loan recipient from using grant funds to cleanup a site if the recipient is potentially liable under §107 of CERCLA for that site.
  - c. Substantial EPA involvement may include reviewing financial and environmental status reports; and monitoring all reporting, record-keeping, and other program requirements.
  - d. Substantial EPA involvement may include the review of the substantive terms of RLF loans and cleanup subgrants.
  - e. EPA may waive any of the provisions in term and condition II. B.1, with the exception of property-specific funding determinations. EPA will provide waivers in writing.
2. Effect of EPA's substantial involvement includes:
  - a. EPA's review of any project phase, document, or cost incurred under this cooperative agreement will not have any effect upon CERCLA §128 *Eligible Response Site* determinations or for rights, authorities, and actions under CERCLA or any Federal statute.
  - b. The CAR remains responsible for ensuring that all cleanups are protective of human health and the environment and comply with all applicable Federal and State laws.
  - c. The CAR remains responsible for ensuring costs are allowable under applicable OMB Circulars.

### **C. Cooperative Agreement Recipient Roles and Responsibilities**

1. The CAR must acquire the services of a qualified environmental professional(s) to coordinate, direct, and oversee the brownfields cleanup activities at a particular site, if they do not have such a professional on staff.
  - a. The CAR shall act as or appoint a qualified "fund manager" to carry out responsibilities that relate to financial management of the loan and/or subgrant program. However, the CAR remains accountable to EPA for the proper expenditure of cooperative agreement funds. Any funding arrangements between the CAR and the fund manager for services performed must be consistent with 40 CFR Part 31.
  - b. The CAR is responsible for ensuring that borrowers and subgrant recipients comply with the terms of their agreements with the CAR, and that agreements between the CAR and borrowers and subgrant recipients are consistent with the terms and conditions of this agreement.

### **D. Quarterly Progress Reports**

1. The CAR must submit progress reports on a quarterly basis (30 days after the end of each Federal fiscal quarter) to the EPA Project Officer. The progress reports must document incremental progress at achieving the project goals and milestones. Quarterly progress reports must include:
  - a. Documentation of: progress at meeting performance outcomes/outputs; project narrative; project time line, and an explanation for any slippage in meeting established outputs/outcomes.
  - b. An update on project milestones.
  - c. A budget recap summary page with the following headings: Current Approved Budget; Costs Incurred this Quarter; Costs Incurred to Date; and Total Remaining Funds.
  - d. If applicable, quarterly reports must specify costs incurred at petroleum-only brownfields sites.
  - e. Recipient quarterly reports must clearly identify which activities performed during the reporting period were undertaken with EPA funds, and will relate EPA-funded activities to the objectives and milestones agreed upon in the workplan including a list of sites where cleanup (either through loans or subgrants) activities were completed. To the extent consistent with the workplan for this agreement, activities undertaken with EPA funds to be included in quarterly performance and financial reporting include:
    - i. Acres per property(ies)
    - ii. Cleanup started/completed
    - iii. Types of contaminants cleaned up
    - iv. Acres of greenspace created
    - v. Engineering/institutional controls required, type, and whether they are in place
    - vi. Redevelopment underway
    - vii. Number/value of loans made
    - viii. Number/value of subgrants made

- ix. Funds leveraged
  - x. Jobs leveraged
  - xi. Health monitoring studies, insurance, and/or institutional controls funded
2. The CAR must maintain records that will enable it to report to EPA on the amount of funds expended by the CAR, borrowers or subgrant recipients at petroleum sites.
3. The CAR must complete and submit relevant portions of the Property Profile Form reporting the signing of a loan or subgrant, the initiation of cleanup activities, the completion of cleanup activities and other relevant project milestones, e.g., concerning institutional controls, contaminants, and reuse. The CAR must submit the updated Property Profile Form reflecting such events within 30 days after the end of the Federal fiscal quarter in which the event occurred. The CAR may be provided access to an on line reporting system, the Assessment, Cleanup and Redevelopment Exchange System, by the EPA Project Officer to perform their reporting requirements. Alternately, the CAR may complete a hard copy version of the Property Profile Form available from their EPA Project Officer or on line at:  
<http://www.epa.gov/brownfields/pubs/rptforms.htm>
4. In accordance with 40 C.F.R. § 31.40 (d), the recipient agrees to inform EPA as soon as problems, delays or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the assistance agreement workplan.

### **III. FINANCIAL ADMINISTRATION REQUIREMENTS**

#### ***A. Cost Share Requirement***

1. CERCLA §104(k)(9)(B)(iii) requires the recipient of this cooperative agreement to pay a cost share (which may be in the form of a contribution of money, labor, material, or services from a non-federal source) of at least 20 percent (i.e., 20 percent of the total federal funds awarded). The cost share contribution must be for costs that are eligible and allowable under the cooperative agreement and must be supported by adequate documentation.

#### **B. Eligible Uses of the Funds for the Cooperative Agreement Recipient, Borrower, and/or Subgrant Recipients**

1. To the extent allowable under the EPA approved workplan, cooperative agreement funds may be used for eligible programmatic expenses to capitalize the RLF and conduct cleanups.
- a. The CAR must maintain records that will enable it to report to EPA on the amount of costs incurred by the CAR, borrowers or subgrant recipients at petroleum-only brownfields sites.
  - b. At least 60% of the funds must be used by the CAR to provide loans for the cleanup of eligible brownfields sites and for eligible programmatic costs for managing the RLF. Up to 40% can be used for subgrants to clean up eligible brownfield sites under the RLF and for eligible programmatic costs for managing subgrant(s) (note: cleanup subgrants are limited to \$200,000 per site).
  - c. The CAR may discount loans, also referred to as the practice of forgiving a portion of loan principle. For an individual loan, the amount of principal discounted may be any percentage

of the total loan amount up to 30 percent, provided that the total amount of the principal forgiven for that loan shall not exceed \$200,000. For an RLF cooperative agreement budget as a whole, the total dollar amount of principal forgiven through discounted loans plus the amount subgranted shall not exceed a total of 40% of RLF grant funds awarded. The entities eligible for discounted loans are provided below.

- d. To determine whether a cleanup subgrant is appropriate, the CAR must consider:
  - i. The extent the subgrant will facilitate the creation of, preservation of, or addition to a park, greenway, undeveloped property, recreational property, or other property used for nonprofit purposes;
  - ii. The extent the subgrant will meet the needs of a community that has the inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community;
  - iii. The extent the subgrant will facilitate the use or reuse of existing infrastructure; and
  - iv. The benefit of promoting the long-term availability of funds from a revolving loan fund for brownfield remediation.

The CAR must maintain sufficient records to support and document these determinations.

- 2. The CAR may use cooperative agreement funds to capitalize a revolving loan fund to be used for loans or subgrants for cleanup and for eligible programmatic expenses. Eligible programmatic expenses may include direct costs for:
  - a. Determining whether RLF cleanup activities at a particular site are authorized by CERCLA 104(k);
  - b. Ensuring that a RLF cleanup complies with applicable requirements under Federal and State laws, as required by CERCLA 104(k);
  - c. Ensuring that public participation requirements are met. This includes developing or funding a community relations plan which will include reasonable notice, opportunity for involvement, and response to comments;
  - d. Establishing an administrative record for each site;
  - e. Ensuring the adequacy of each RLF cleanup as it is implemented, including overseeing the borrowers and/or subgrantees activities to ensure compliance with applicable Federal and State environmental requirements;
  - f. The development of Quality Assurance Project Plans (QAPPs) as required by Part 31 and Part 30 regulations;
  - g. Ensuring that the site is secure if a borrower or subgrant recipient is unable or unwilling to complete a brownfields cleanup;

h. Preparing an analysis of brownfields cleanup alternatives which will include information about the site and contamination issues (i.e., exposure pathways, identification of contaminant sources, etc.); cleanup standards; applicable laws; alternatives considered; and the proposed cleanup. The evaluation of alternatives must include effectiveness, implementability, and the cost of the response proposed. The evaluation will include an analysis of reasonable alternatives including no action;

i. For petroleum sites, an analysis of cleanup alternatives would include considering a range of proven cleanup methods including identification of contaminant sources, exposure pathways, and an evaluation of corrective measures;

j. Using a portion of a loan or subgrant to purchase environmental insurance for the site. The loan or subgrant may not be used to purchase insurance intended to provide coverage for any of the Ineligible Uses under Section D.

k. Any other eligible programmatic costs including costs incurred by the recipient in making and managing a loan; obtaining financial management services; quarterly reporting to EPA; awarding and managing subgrants to the extent allowable in III. D. 2.; and carrying out outreach pertaining to the loan and subgrant program to potential borrowers and subgrant recipients; and

l. Subgrantee progress reporting to the CAR is an eligible programmatic cost.

3. If the CAR makes a subgrant to a local government that includes an amount (not to exceed 10% of the subgrant) for brownfields program development and implementation, the terms and conditions of that agreement must include a provision that ensures that the local government subgrantee maintains records adequate to ensure compliance with the limits on the amount of subgrant funds that may be expended for this purpose.

**C. Ineligible Uses of the Funds for the Cooperative Agreement Recipient, Borrower, and/or Subgrant Recipients**

1. Cooperative agreement funds shall not be used by the CAR, borrower and/or subgrant recipient for any of the following activities:

a. Pre-cleanup environmental assessment activities, such as site assessment, identification, and characterization with the exception of site monitoring activities that are reasonable and necessary during the cleanup process, including determination of the effectiveness of a cleanup.

b. Monitoring and data collection necessary to apply for, or comply with, environmental permits under other federal and state laws, unless such a permit is required as a component of the cleanup action.

c. Construction, demolition, and development activities that are not cleanup actions (e.g., marketing of property or construction of a new non-cleanup facility), and addressing public or private drinking water supplies that have deteriorated through ordinary use;

d. Job training unrelated to performing a specific cleanup at a site covered by a loan or subgrant.

- e. To pay for a penalty or fine.
  - f. To pay a federal cost share requirement (for example, a cost-share required by another Federal grant) unless there is specific statutory authority.
  - g. To pay for a response cost at a brownfields site for which the recipient of the grant or loan is potentially liable under CERCLA §107.
  - h. To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the cleanup.
  - i. Unallowable costs (e.g., lobbying and fund raising) under applicable OMB Circulars.
2. Under CERCLA 104(k)(4)(B), administrative costs are prohibited costs under this agreement. Prohibited administrative costs include all indirect costs under applicable OMB Circulars incurred by the CAR and subgrantees.
- a. Ineligible administrative costs include costs incurred in the form of salaries, benefits, contractual costs, supplies, and data processing charges, incurred to comply with most provisions of the *Uniform Administrative Requirements for Grants* contained in 40 CFR Part 30 or 40 CFR part 31. Direct costs for grant and subgrant administration, with the exception of costs specifically identified as eligible programmatic costs, are ineligible even if the grantee or subgrant recipient is required to carry out the activity under the grant agreement. Costs incurred to report quarterly performance to EPA under the grant are eligible.
  - b. Ineligible grant or subgrant administration costs include direct costs for:
    - i. Preparation of applications for Brownfields grants and subgrants;
    - ii. Record retention required under 40 CFR 30.53 and 40 CFR 31.42;
    - iii. Record-keeping associated with supplies and equipment purchases required under 40 CFR 30.33, 30.34, and 30.35 and 40 CFR 31.32 and 31.33;
    - iv. Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 40 CFR 30.25 and 40 CFR 31.30;
    - v. Maintaining and operating financial management systems required under 40 CFR 30 and 40 CFR 31;
    - vi. Preparing payment requests and handling payments under 40 CFR 30.22 and 40 CFR 31.21;
    - vii. Non-federal audits required under 40 CFR 30.26, 40 CFR 31.26, and OMB Circular A-133; and
    - viii. Close out under 40 CFR 30.71 and 40 CFR 31.50.
    - ix. Borrowers are subject to the CERCLA 104(k)(4)(B) administrative cost prohibition requirements. The CAR must ensure that loan agreements prohibit borrowers and subgrantees

from using loans financed with cooperative agreement funds for administrative costs.

c. Prohibited administrative costs for the borrower (including those in the form of salaries, benefits, contractual costs, supplies, and data processing charges) are those incurred for loan administration and overhead costs.

d. Direct costs for loan administration are ineligible even if the borrower is required to carry out the activity under the loan agreement. Ineligible loan administration costs include expenses for:

- i. Preparation of applications for loans and loan agreements;
- ii. Preparing revisions and changes in the budget, workplans, and other documents required under the loan agreement;
- iii. Maintaining and operating financial management and personnel systems;
- iv. Preparing payment requests and handling payments; and
- v. Audits.
- vi. Overhead costs by the borrower that do not directly clean up brownfields site contamination or comply with laws applicable to the cleanup are ineligible administrative costs. Examples of overhead costs that would be ineligible in loans include expenses for:
- vii. Salaries, benefits and other compensation for person who are not directly engaged in the cleanup of the site (e.g., marketing and human resource personnel);
- viii. Facility costs such as depreciation, utilities, and rent on the borrower's administrative offices; and
- ix. Supplies and equipment not used directly for cleanup at the site.
- x. Costs incurred by the borrower for procurement are eligible only if the procurement contract is for services or products that are direct costs for performing the cleanup, for insurance costs, or for maintenance of institutional controls.
- xi. Direct costs by the borrower for progress reporting to the lender are eligible programmatic costs.

3. Cooperative agreement funds may not be used for any of the following properties:

- a. Facilities listed, or proposed for listing, on the National Priorities List (NPL);
- b. Facilities subject to unilateral administrative orders, court orders, administrative orders on consent or judicial consent decree issued to or entered by parties under CERCLA;
- c. Facilities that are subject to the jurisdiction, custody or control of the United States government except land held in trust by the United States government for an Indian tribe; or

- d. A site excluded from the definition of a brownfields site for which EPA has not made a property-specific funding determination.

#### **D. Subgrant Recipient and Borrower Eligibility**

1. The CAR may only provide cleanup subgrants to an eligible entity or nonprofit organization to clean up sites *owned* by the eligible entity or nonprofit organization at the time the subgrant is awarded. Eligible subgrant recipients include eligible entities as defined under CERCLA 104(k)(1) and non profit organizations as defined at Section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999. Nonprofit organizations described in Section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act of 1995 are not eligible for subgrants.

a. The subgrant recipient must retain ownership of the site throughout the period of performance of the subgrant. For the purposes of this agreement, the term "owns" means fee simple title unless EPA approves a different arrangement. **However, the CAR may not provide a subgrant to itself or another component of its own unit of government or organization.**

b. The CAR may discount loans for those eligible entities identified in CERCLA section 104(k)(1) and non profit organizations as defined at Section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999. This definition includes non profit universities and other non profit educational institutions. **Private, for-profit entities are not eligible for discounted loans.**

c. The CAR shall not loan or subgrant funds that will be used to pay for cleanup activities at a site for which a loan or grant recipient is potentially liable under CERCLA §107. The CAR may rely on its own investigation which can include an opinion from the subgrant recipient's or borrower's counsel. However, the CAR must advise the borrower or subgrant recipient that the investigation and/or opinion of the subgrant recipient's or borrower's counsel is not binding on the Federal Government.

d. For approved eligible petroleum-contaminated brownfields sites, the person cleaning up the site must be a person who is not potentially liable for cleaning up the site. For brownfields grant purposes, an entity generally will not be considered potentially liable for petroleum contamination if it has not dispensed or disposed of petroleum or petroleum-product at the site, has not exacerbated the contamination at the site, and took reasonable steps with regard to the contamination at the site.

e. The CAR shall maintain sufficient documentation supporting and demonstrating the eligibility of the sites, borrowers, and subgrant recipients.

f. A borrower or subgrant recipient must submit information regarding its overall environmental compliance history including any penalties resulting from environmental non-compliance at the site subject to the loan or subgrant. The CAR, in consultation with the EPA, must consider this history in its analysis of the borrower or subgrant recipient as a cleanup and business risk.

g. An entity that is currently suspended, debarred, or otherwise declared ineligible cannot be a borrower or subgrant recipient.



**E. Obligations for Grant Recipients, Borrowers, or Subgrantees Asserting a Limitation on Liability from CERCLA §107**

1. Grant recipients, borrowers, or subgrantees who are eligible, or seek to become eligible, to receive a grant, loan, or subgrant based on a liability protection from CERCLA as a: (1) bona fide prospective purchaser (BFPP), (2) contiguous property owner (CPO), or (3) innocent landowner (ILO) (known as the "landowner liability protections"), must meet certain threshold criteria and satisfy certain continuing obligations to maintain their status as an eligible grant recipient, borrower, or subgrantee. These include, but are not limited to the following:

a. All grant recipients, borrowers, or subgrantees asserting a BFPP, CPO or ILO limitation on liability must perform (or have already performed) "all appropriate inquiry," as found in section 101(35)(B) of CERCLA, on or before the date of acquisition of the property.

b. Grant recipients, borrowers, or subgrantees seeking to qualify as bona fide prospective purchasers or contiguous property owners must not be:

i. potentially liable, or affiliated with any other person that is potentially liable,

ii. for response costs at the facility through (a) any direct or indirect familial

iii. relationship; or (b) any contractual, corporate, or financial relationships; or

iv. a reorganized business entity that was potentially liable or

v. otherwise liable under CERCLA §107(a) as a prior owner or operator, or generator or transporter of hazardous substances to the facility.

c. Landowners must meet certain continuing obligations in order to achieve and maintain status as a landowner protected from CERCLA liability. These continuing obligations include:

i. complying with any land use restrictions established or relied on in connection with the response action at the vessel or facility and not impeding the effectiveness or integrity of institutional controls;

ii. taking reasonable steps with respect to hazardous substance releases;

iii. providing full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration;

iv. complying with information requests and administrative subpoenas (applies to bona fide prospective purchasers and contiguous property owners); and

v. complying with legally required notices (again, applies to bona fide prospective purchasers and contiguous property owners) [see CERCLA § 101(40)(B)-(H), 107(q)(1)(A), 101(35)(A)-(B).].

d. CERCLA requires additional obligations to maintain liability protection. These obligations are found at §§ 101(35), 101(40), 107(b), 107(q) and 107(r).

## 2. Use of Program Income

- a. In accordance with 40 CFR 31.25(g)(2), the CAR is authorized to add program income to the funds awarded by the EPA and use the program income under the same terms and conditions of this agreement. Program income for the RLF shall be defined as the gross income received by the recipient, directly generated by the cooperative agreement award or earned during the period of the award. Program income shall include principal repayments, interest earned on outstanding loan principal, interest earned on accounts holding RLF program income not needed for immediate lending, all loan fees and loan-related charges received from borrowers and other income generated from RLF operations including proceeds from the sale, collection, or liquidations of assets acquired through defaults of loans.
- b. The CAR may use program income from fees, interest payments from loans, and other forms of eligible program income to meet its cost-share. The CAR shall not use repayments of principal of loans to meet the CAR's cost-share requirement. Repayments of principal must be returned to the CAR's Brownfields cleanup revolving fund.
- c. The CAR that elects to use program income to cover all or part of a RLF's programmatic costs shall maintain adequate accounting records and source documentation to substantiate the amount and percent of program income expended for eligible RLF programmatic costs, and comply with applicable OMB cost principles when charging costs against program income. For any cost determined by the EPA to have been an ineligible use of program income, the recipient shall reimburse the RLF or the EPA. EPA will notify the recipient of the time period allowed for reimbursement.
- d. Loans or subgrants made with a combination of program income and direct funding from EPA are subject to the same terms and conditions as those applicable to this agreement. Loans and subgrants made with direct funding from EPA in combination with non Federal sources of funds are also subject to the same terms and conditions of this agreement.
- e. CAR must obtain EPA approval of the substantive terms of loans and subgrants made entirely with program income.

## H. Post Cooperative Agreement Program Income

1. After the end of the award period, the CAR shall use program income in a manner consistent with the terms and conditions of a "close out" agreement negotiated with EPA. In accordance with 40 CFR 31.42(c)(3), the CAR shall maintain appropriate records to document compliance with the requirements of the close out agreement (i.e., records relating to the use of post-award program income). EPA may request access to these records or may negotiate post-close-out reporting requirements to verify that post-award program income has been used in accordance with the terms and conditions of the close out agreement.

## 2. Interest-Bearing Accounts

- a. The CAR must deposit advances of grant funds and program income (e.g., fees, interest payments, repayment of principal) in an interest bearing account.
- b. Interest earned on advances, CARs and subgrant recipients are subject to the provisions of 40 CFR §31.21(i) and §30.22(l) relating to remitting interest on advances to EPA on a

quarterly basis.

- c. Interest earned on program income is considered additional program income.

## **IV. RLF ENVIRONMENTAL REQUIREMENTS**

### **A. Authorized RLF Cleanup Activities**

1. The CAR shall prepare an analysis of brownfields cleanup alternatives which will include information about the site and contamination issues (i.e., exposure pathways, identification of contaminant sources, etc.); cleanup standards; applicable laws; alternatives considered; and the proposed cleanup. The evaluation of alternatives must include effectiveness, implementability, and the cost of the response proposed. The evaluation will include an analysis of reasonable alternatives including no action. The clean up method chosen must be based on this analysis.
2. For cleanup of petroleum sites, an analysis of cleanup alternatives must include considering a range of proven cleanup methods including identification of contaminant sources, exposure pathways, and an evaluation of corrective measures. The clean up method chosen must be based on this analysis.
3. Prior to conducting or engaging in any on-site activity with the potential to impact historic properties (such as invasive sampling or cleanup), the grantee shall consult with EPA regarding potential applicability of the National Historic Preservation Act and, if applicable, shall assist EPA in complying with any requirements of the Act and implementing regulations.

### **B. Quality Assurance (QA) Requirements**

1. If environmental samples are to be collected as part of the brownfields cleanup (e.g., cleanup verification sampling, post-cleanup confirmation sampling), the CAR shall comply with 40 CFR Part 31.45 (or 40 CFR Part 30.54 requirements for nonprofit organizations) requirements to develop and implement quality assurance practices sufficient to produce data adequate to meet project objectives and to minimize data loss. State law may impose additional QA requirements.

### **C. Community Relations and Public Involvement in RLF Cleanup Activities**

1. All RLF loan and subgrant cleanup activities require a site-specific community relations plan that includes providing reasonable notice, opportunity for involvement, response to comments, and administrative records that are available to the public.

### **D. Administrative Record**

1. The CAR shall establish an administrative record that contains the documents that form the basis for the selection of a cleanup plan. Documents in the administrative record shall include an analysis of reasonable alternatives including no action; site investigation reports; the cleanup plan; cleanup standards used; responses to public comments; and verification that shows that cleanups are complete. The CAR shall keep the administrative record available at a location convenient to the public and make it available for inspection.

### **E. Implementation of RLF Cleanup Activities**

1. The CAR shall ensure the adequacy of each RLF cleanup in protecting human health and the environment as it is implemented. Each loan and subgrant agreement shall contain terms and conditions that allow the CAR to change cleanup activities as necessary based on comments from the public or any new information acquired.

2. If the borrower or subgrant recipient is unable or unwilling to complete the RLF cleanup, the CAR shall ensure that the site is secure. The CAR shall notify the appropriate state agency and the U.S. EPA to ensure an orderly transition should additional activities become necessary.

#### **F. Completion of RLF Cleanup Activities**

1. The CAR shall ensure that the successful completion of a RLF cleanup is properly documented. This must be done through a final report or letter from a qualified environmental professional, or other documentation provided by a State or Tribe that shows cleanups are complete. This documentation needs to be included as part of the administrative record.

### **V. REVOLVING LOAN FUND REQUIREMENTS**

#### **A. Prudent Lending and Subgranting Practices**

1. The CAR is expected to establish economically sound structures and day-to-day management and processing procedures to maintain the RLF and meet long-term brownfield cleanup lending/subgranting objectives. These include establishing: underwriting principles that can include the establishment of interest rates, repayment terms, fee structure, and collateral requirements; and, lending/subgranting practices that can include loan/subgrant processing, documentation, approval, servicing, administrative procedures, collection, and recovery actions.

2. The CAR shall not incur costs under this cooperative agreement for loans, subgrants or other eligible costs until an RLF grant workplan. The CAR shall ensure that the objectives of the workplan are met through its or the fund manager's selection and structuring of individual loans/subgrants and lending/subgranting practices. These activities shall include, but not be limited to the following:

a. Considering awarding subgrants on a competitive basis. If the CAR decides not to award any subgrants competitively, it must document the basis for that decision and inform EPA.

b. Establishing appropriate project selection criteria consistent with Federal and state requirements, the intent of the RLF program, and the cooperative agreement entered into with EPA.

c. Establishing threshold eligibility requirements whereby only eligible borrowers or subgrant recipients receive RLF financing.

d. Developing a formal protocol for potential borrowers or subgrant recipients to demonstrate eligibility, based on the procedures described in the initial RLF application proposal and cooperative agreement application. Such a protocol shall include descriptions of projects that will be funded, how loan monies will be used, and qualifications of the borrower or subgrant recipient to make legitimate use of the funds. Additionally, CARs shall ask borrowers or

subgrant recipients for an explanation of how a project, if selected, would be consistent with RLF program objectives, statutory requirements and limitations, and protect human health and the environment.

- e. Requiring that borrowers or subgrant recipients submit information describing the borrower's or subgrant recipient's environmental compliance history. The CAR shall consider this history in an analysis of the borrower or subgrant recipient as a cleanup and business risk.
- f. Establishing procedures for handling the day-to-day management and processing of loans and repayments.
- g. Establishing standardized procedures for the disbursement of funds to the borrower or subgrant recipient.

## **B. Inclusion of Special Terms and Conditions in RLF Loan and Subgrant Documents**

1. The CAR shall ensure that the borrower or subgrant recipient meets the cleanup and other program requirements of the RLF grants by including the following special terms and conditions in RLF loan agreements and subgrant awards:

- a. Borrowers or subgrant recipients shall use funds only for eligible activities and in compliance with the requirements of CERCLA 104(k) and applicable Federal and State laws and regulations. See Section I.A.2.
- b. Borrowers or subgrant recipients shall ensure that the cleanup protects human health and the environment.
- c. Borrowers or subgrant recipients shall document how funds are used. If a loan or subgrant includes cleanup of a petroleum-contaminated brownfields site(s), the CAR shall include a term and condition requiring that the borrower or subgrant recipient maintain separate records for costs incurred at that site(s).
- d. Borrowers or subgrant recipients shall maintain records for a minimum of three years following completion of the cleanup financed all or in part with RLF funds. Borrowers or subgrant recipients shall obtain written approval from the CAR prior to disposing of records. Cooperative agreement recipients shall also require that the borrower or subgrant recipient provide access to records relating to loans and subgrants supported with RLF funds to authorized representatives of the Federal government.
- e. Borrowers or subgrant recipients shall certify that they are not currently, nor have they been, subject to any penalties resulting from environmental non-compliance at the site subject to the loan.
- f. Borrowers or subgrant recipients shall certify that they are not potentially liable under §107 of CERCLA for the site or that, if they are, they qualify for a limitation or defense to liability under CERCLA. If asserting a limitation or defense to liability, the borrower or subgrant recipient must state the basis for that assertion. When using grant funds for petroleum-contaminated brownfields sites, borrowers or subgrant recipients shall certify that they are not a viable responsible

party or potentially liable for the petroleum contamination at the site. Refer to the most recent issue of EPA's *Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund and Cleanup Grants* for a discussion of these terms. The CAR may consult with EPA for assistance with this matter.

- g. Borrowers or subgrant recipients shall conduct cleanup activities as required by the CAR.
- h. Subgrant recipients shall comply with applicable EPA assistance regulations (40 CFR Part 31 for governmental entities or 40 CFR Part 30 for nonprofit organizations). All procurements conducted with subgrant funds must comply with 40 CFR Part 31.36 or 40 CFR Part 30.40-30.48, as applicable.

### **C. Default**

1. In the event of a loan default, the CAR shall make reasonable efforts to enforce the terms of the loan agreement including proceeding against the assets pledged as collateral to cover losses to the loan. If the cleanup is not complete at the time of default, the CAR is responsible for: (1) documenting the nexus between the amount paid to the borrower (bank or other financial institution) and the cleanup that took place prior to the default; and (2) securing the site (e.g., ensuring public safety) and informing the EPA Project Officer and the State.

### **D. Conflict of Interest**

1. The CAR shall establish and enforce conflict of interest provisions that prevent the award of subgrants that create real or apparent personal conflicts of interest, or the CAR's appearance of lack of impartiality. Such situations include, but are not limited to, situations in which an employee, official, consultant, contractor, or other individual associated with the CAR (affected party) approves or administers a grant or subgrant to a subgrant recipient in which the affected party has a financial or other interest. Such a conflict of interest or appearance of lack of impartiality may arise when:

- a. The affected party,
- b. Any member of his immediate family,
- c. His or her partner, or
- d. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the subgrant recipient.

Affected employees will neither solicit nor accept gratuities, favors, or anything of monetary value from subgrant recipients. Recipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by affected parties.

## **VI. DISBURSEMENT, PAYMENT AND CLOSEOUT**

For the purposes of these terms and conditions, the following definitions apply: "payment" is the U.S. EPA's transfer of funds to the CAR; the CAR incurs an "obligation" when it enters into a loan agreement with the borrower or subgrant recipient; "disbursement" is the transfer of funds from the CAR to the borrower or subgrant recipient. "Close out" refers to the process that the U.S. EPA follows to both ensure that all administrative actions and work required under the cooperative agreement have been completed, and, to establish a closeout agreement to govern the use of program income.

#### **A. Payment Schedule**

1. The CAR may request payment from EPA pursuant to 40 CFR. §31.21(c) after it incurs an obligation or has an eligible programmatic expense. EPA will make payments to the CAR on a schedule which minimizes the time elapsing between transfer of funds from EPA and disbursement by the recipient to the borrower or subgrant recipient to pay costs incurred or to meet a "progress payment" schedule. The recipient may request payments when it receives a disbursement request from a borrower or subgrant recipient based on the borrower or subgrant recipient's incurred costs under the "actual expense" method or the schedule for disbursement under the "schedule" disbursement method. The CAR shall disburse accrued program income to meet all or part of this obligation or eligible programmatic expenses prior to requesting payment from EPA.

#### **B. Methods of Disbursement**

1. The CAR may choose to disburse funds to the borrower by means of 'actual expense' or 'schedule.' If the schedule method is used, the recipient must ensure that the schedule is designed to reasonably approximate the borrower's incurred costs.

a. An 'actual expense' disbursement approach requires the borrower to submit documentation of the borrower's expenditures (e.g., invoices) to the CAR prior to requesting payment from EPA.

b. A 'schedule' disbursement is one in which all, or an agreed upon portion, of the obligated funds are disbursed to the borrower on the basis of an agreed upon schedule (e.g., progress payments) or, in unusual circumstances, upon execution of the loan. The CAR shall submit documentation of disbursement schedules to EPA.

c. If the disbursement schedule of the loan agreement calls for disbursement of the entire amount of the loan upon execution, the CAR shall demonstrate to the U.S. EPA Project Officer that this method of disbursement is necessary for purposes of cleaning up the site covered by the loan. Further, the CAR shall include an appropriate provision in the loan agreement which ensures that the borrower uses loan funds promptly for costs incurred in connection with the cleanup and that interest accumulated on schedule disbursements is applied to the cleanup.

d. Subgrant funds must be disbursed to the subgrant recipient in accordance with 40 CFR 31.21 or 40 CFR 30.22, as applicable.

e. The CAR may negotiate a predetermined schedule(s) for disbursement to subgrant recipients provided the schedule minimizes the time elapsing between disbursement by the CAR and the subgrant recipient's payment of costs incurred in carrying out the subgrant.

f. If the disbursement schedule of the subgrant calls for disbursement of the entire amount of the subgrant upon execution, the CAR shall demonstrate to the U.S. EPA Project Officer that this method of disbursement is necessary for purposes of cleaning up the site covered by the subgrant. Further, the CAR shall include an appropriate provision in the subgrant agreement which ensures that the subgrant recipient uses funds promptly for costs incurred in connection with the cleanup and that interest accumulated on schedule disbursements is applied to the cleanup.

### **C. Schedule for Closeout**

1. There are two fundamental criteria for closeout:
  - a. Final payment of funds from EPA to the CAR following expiration of the terms of the agreement or expenditure of the funds awarded; and
  - b. Completion of all cleanup activities funded by the amount of the award.
2. The first criterion of cooperative agreement closeout is met when the CAR receives all payments from EPA. The second closeout criterion is met when all cleanup activities funded by the initial amount of the award are complete.
3. The CAR must negotiate a closeout agreement with EPA to govern the use of program income after closeout. Eligible uses include: continuing to operate a RLF for brownfields cleanup and/or other brownfields activities.
4. The closeout agreement will require that any assessments or cleanups financed with program income be consistent with the CERCLA Section 107 prohibitions and site eligibility limitations contained within these Terms and Conditions.

### **D. Compliance with Closeout Schedule**

1. If a CAR fails to comply with the closeout schedule, any cooperative agreement funds not obligated under loan agreement to a borrower or subgrant recipient may be subject to federal recovery, and the cooperative agreement award amended to reflect the reduced amount of the cooperative agreement.

### **E. Recovery of RLF Assets**

1. In case of termination for cause or convenience, the CAR shall return to EPA its fair share of the value of the RLF assets consisting of cash, receivables, personal and real property, and notes or other financial instruments developed through use of the funds. EPA's fair share is the amount computed by applying the percentage of EPA participation in the total capitalization of the RLF to the current fair market value of the assets thereof. EPA also has remedies under 40 CFR 31.43 and CERCLA 104(k) when the Agency determines that the value of such assets has been reduced by improper/illegal use of cooperative agreement funding. In such instances, the CAR may be required to compensate EPA over and above the Agency's share of the current fair market value of the assets. Nothing in this agreement limits EPA's authorities under CERCLA to recover response costs from a potentially responsible party.